United States Court of Appeals

for the Second Circuit

APPENDIX

74-1554

United States Court of Appeals

For the Second Circuit.

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UNITED STATES OF AMERICA,

Appellee,

against

MICHAEL PATERNO, GEORGE DENTI and
PATERNO AND SONS, INC.,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK.

JOINT APPENDIX.

Volume II—Pages 665a to 1320a.

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UNITED STATES COURT OF APPEALS
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MR.SILVERMAN: The next wintess is Christopher Canty.

C H R I S T O P H E R C A N T Y, called as a witness by the government, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SILVERMAN:

Q Mr. Canty, by whom are you employed?

A Chemical Bank.

Q And in what branch are you employed?

A At 265 Broadway, Branch No. 33.

MR. BRILL: I cannot hear you.

(Answer read by the reporter.)

THE COURT: Speak a little louder.

Q Mr. Canty, when was the first time that we met?

A A little while ago outside in the hall.

Q And prior to that when was the first time that you heard about this case?

A Oh, probably about 10:30 this morning when a gentleman from the IRS came by the bank with a subpoena.

Q At that time, sir, were you shown two checks?

A Yes, I was.

Q And were they checks drawn on the Chemical Bank?

A I don't believe they were drawn on the Chemical

Bank; they were drawn on another bank.

Q Were they two checks that were negotiated at the Chemical Bank?

A They appear to be negotiated at the Chemical Bank, that's correct.

Q Mr. Canty, I would like to show you Defendants' Exhibits L and K, and ask you if those were the checks that you were shown (handing)?

A Yes, they are the checks.

Q By examining the face of those checks, Mr. Canty, are there any teller stamp marks on the face of those checks, of Chemical?

A No, there do not appear to be any teller's validating stamps on the checks.

Q Who is the payee of that check?

A Both of them are B&C Trucking Company.

Q Will you please turn over to the back of the check, sir.

(Witness examines).

Q Is there an endorsement on the back of the checks?

A Yes, there appears to be an endorsement written on the back.

Q And what is that endorsement?

A It appears to be B&C Trucking -- one of them is

very difficult to read. The other is more legible.

Q What is the bank procedure as far as whether or not a check may be cashed when it is payable to a corporation?

MR. BRILL: If your Honor please, I am going to bject to that and ask for a side bar conference. I do not see the relevance of the question.

THE COURT: What is the relevance of this?

MR. SILVERMAN: The relevancy is that these were two checks shown to Mr. Capossela, who was the principal of B&C Trucking, who testified on Friday, and there was an inference made that those checks might have been cashed, not deposited; and the government is now calling a representative from the Chemical Bank to determine whether these checks were cashed or that Mr. Capossela deposited to his account.

MR. ROSENTHAL: Your Honor, he has the cart before the horse in that there is no proof in this record that B&C Trucking was a corporation, nor was it, so far as I understand, a corporation at the time of the date of those checks.

THE COURT: If that added ground to your objection?

MR. ROSENTHAL: Well, the ground of the objection is that the question takes into consideration something that

is not in evidence and that has nothing to do with these particular checks. as to what the role of the Chemical Bank as wconcerning the cashing of checks payable to a corporation.

THE COURT: What do you say, Mr. Silverman?

MR. SILVERMAN: Your Honor, the whole point of this --

THE COURT: It could be a business name -- it is not a corporation.

MR. SILVERMAN: I will withdraw the question, your Honor.

THE COURT: Okay.

BY MR. SILVERMAN:

Q Mr. Canty, by examining those checks were those checks cashed or deposited?

A By looking at the checks it appears likely that they were deposited and not cashed, because of the lack of a stamp on the front.

Q If there was a stamp on the front would that mean it was cashed or deposited?

MR. ROSENTHAL: I submit, if your Honor please, that the witness has answered the question.

THE COURT: Sustained.

MR.SILVERMAN No further questions.

THE COURT: Cross examination.

MR. BRILL: I have one question, your Honor.

CROSS EXAMINATION

BY MR. BRILL:

Q Mr. Canty, does it come to your knowledge, since you are with the Chemical Bank, that checks are cashed by the tellers without a stamp being placed on them?

A Occasionally that can happen.

MR. BRILL: Thankyou, that is all.

THE COURT: Anything else?

MR.ROSENTHAL: I have no other questions.

MR. SILVERMAN: Thank you, Mr. Canty.

THE COURT: All right, Mr. Canty.

(Witness excused.)

A N N E A L T R O, called as a witness on behalf of the government, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SILVERMAN:

Q Mrs. Altro, what is your present occupation?

A I am a housewife.

Q And prior to becoming a housewife were you employed?

A Yes.

Q And where were you employed?

A Paterno & Sons.

Q And what is your maiden name, please?

A Forte.

Q Is your sister Louise Ferraro?

A Yes, sir.

Q How did you obtain your position with Paterno & Sons, Inc.?

A My sister was leaving so I took her job.

Q And during that period of time did you work for Paterno & Sons, Inc.?

A I don't remember the exact years. You have the dates that I gave you.

Q Is May 1968 through 1970, is that the time period?

A That's right.

Q When was the first time that we met, Mrs. Altro?

A Last week.

Q Is that the first and only time that we talked about this case?

A Yes.

Q Who else was present at that meeting?

A Mr. Ayres and my brother-in-law.

Q Is he an attorney?

A Yes.

Q Were you called as a witness in March of 1973 to

appear before a grand jury that was investigating this matter?

A Yes.

Q On your first appearance before the grand jury did you testify or did you refuse to answer questions based upon your constitutional privilege?

A Yes.

Q What is the answer?

MR. BRILL: I object to that, if your Honor. I move to strike it out, and ask your Honor to instruct the jury to completely disregard it because she had a right to do what she did.

THE COURT: Sure, there is no question that she had a right, and I think it is irrelevant for any of our purposes, ladies and gentlemen, and I do instruct you, in view of Mr. Brill's request, to disregard it, and I will ask counsel to come up to the side bar.

(At the side bar.)

THE COURT: I have to inform all of you, especially a young fellow like Mr. Silverman, that standing in the middle of the courtroom looking pained and grief-stricken is not a useful legal device in my courtroom. I think you misunderstood the direction, which was that any such information was to be elicited, if you felt it had to be

elicited, outside the hearing of the jury.

MR. SILVERMAN: Your Honor, I believe at the time I made the request, the Court asked me at that time what is the government's position, and it was twofold:

One, requiring in-court subpoenas on court testimony, and you stated at that time, on Wednesday, that in that situation it should be done outside the hearing of the jury.

The second ruling, your Honor, was with reference to the grand jury testimony, that it was a proper subject matter for direct examination.

THE COURT: Only if the defendants were going to bring it out on cross.

MR. SILVERMAN: No, your Honor, that is not what your ruling was.

THE COURT: Are you going to bring this out on cross?

MR. BRILL: No, sir.

THE COURT: Are you?

MR. ROSENTHAL: No.

THE COURT: Okay.

MR. SILVERMAN: I think it is important, your Honor, to government's case.

THE COURT: Why?

MR. SILVERMAN: To show the feeling of the defendant and her position with the firm and her bias towards the firm, to read her grand jury testimony and her statements given to IRS agents, to bear that out.

THE COURT: I suppose there is a point there.

Mr.Brill, what is your view?

MR. BRILL: I don't agree with that. If in fact there are inconsistencies and her recollection needs refreshement with respect to the matters concerning which it is claimed there are inconsistencies, that can be done in the proper, legal way.

It does not require the kind of inquiry which has just been put.

THE COURT: At the moment I am going to exclude it. If you show me some particular or specific reason why you need it I will let you do it but if you are expecting to get the truth from her, it is not enhanced by her plea of privilege. It is the kind of question which the jury should not consider.

MR. SILVERMAN: She is not charged as a co-conspirator.

THE COURT: I am sure she is not but what her reasons were concerning or might have been for pleading privilege, I do not want the jury to speculate on.

I think the less we say about it the better.

MR. SILVERMAN: All right.

(In open court.)

BY MR. SILVERMAN:

Q Mrs. Altro, who at the firm familiarized you with the procedures of Paterno & Sons, Inc., that is, the office work?

A My sister did.

Q What were your responsibilities at Paterno & Sons, Inc. during the period that you worked there?

A I was to do the bookkeeping and pay the bills.

Q Did you also prepare expense checks for signing?

A Yes.

Q Did you prepare any payroll checks to sign?

A Yes.

Q Did you do any general typing?

A Once in a while.

Q Did you perform any filing services for the firm?

A Yes.

Q During the period of time that you worked for Paterno & Sons, Inc. who were the principals of the firm? Who were the officials?

MR.BRILL: I am going to object to that, your

Honor.

THE COURT: Mr. Silverman is changing that to who were the officials.

MR. BRILL: Oh, I beg your pardon. I have no objection to that.

Q Who were the officials?

A Michael Paterno and Tom Cohill.

Q What was Michael Paterno's position at that time?

A President.

Q And Mr. Cohill?

A Vice president.

Q Was Mr.Denti working for the firm at that time?

A Yes, sir.

Q What was his position with the firm?

A Treasurer.

Q Who at the firm during that particular period of time had the authority to sign checks?

A Mike Paterno and Tom.

Q Those are the corporate checks, is that correct?

A Yes.

Q Who had the authority to sign the payroll checks?

A George.

Q That is Mr. Denti.

A Yes.

Q With regard to the expense checks --

MR.BRILL: Your Honor, I do not understand what is meant by "expense checks". A check is a check is a check, and I object to the characterization of "expense checks".

Q With reference to the corporate checks, the corporate account, which of the two officers, Mr. Paterno or Mr. Cohill, would sign the checks more frequently than the other?

MR. BRILL: I object to that, your Honor. Now we are playing a numbers game.

THE COURT: Well, I do not know if it is a numbers game. It is a question that calls for frequency.

Overruled.

Q Will you answer?

A Mike Paterno.

Q Is it true that Mr. Cohill only signed on a rare occasion?

A Yes.

Q Now were you familiar with the bills and invoices that the corporation received from its suppliers and people that it did business with?

A Yes.

Q What was done with the invoices or the bills when

they were first received by the office staff, including yourself?

A WE had a stamp that I would put on it and would have lines on it where I would put in the date the bill was received, and also when I put it in the purchase journal, I would enter the page.

Q Before you put the invoices in the purchase journal where would you put that invoice form and stamp it?

A I would hold it on my desk and I would go through the cost sheets and get backups for that bill.

Q When you say cost sheets, would you explain to the Court and the jury what the cost sheets were?

A They were records of what was done on the job.

Q Who prepared the cost sheets?

A Usually the superintendent on the job.

Q And when you say "on the job" are you referring to a particular site or location?

A Yes.

Q And in what order were the job sheets filed?

A In the job and the date.

Q You say attached to the cost sheets were other things?

A Yes, sir.

Q What was attached to the cost sheets?

A Well, anything that they wanted to come into the office, the backups, the notes.

Q Are you familiar with the type of receipts that Paterno & Sons would receive from the people who performed trucking services for Paterno & Sons?

A Yes.

Q Would this type of receipts be attached to the cost sheets?

A Yes.

Q After you filled out the cost sheets from the job folders you had the invoices, what if anything did you do with the delivery tickets for those receipts?

A I would attach them to the invoice.

Q And would they be stapled to the invoices?

A Yes, if I did not have all of them I would put a clip on until I got all of them.

Q When you finally got all the delivery tickets from aparticular job to a particular invoice would you then staple them to the invoice?

A Yes.

Q Do you recall the occasions when you had an invoice when there were no delivery tickets with the corresponding job sheet to substantiate that invoice?

A Yes.

Q What would you do in those situations?

A Well, I would have to get one. I would call the trucking company and tell them to send in one.

Q Besides calling the trucking company would you call anybody else?

A Or I might call the job and ask if it was there.

Q And with reference to invoices for trucking expenses was there ever an occasion while you worked for Paterno & Sons, Inc. when the invoices could not be supported by a delivery ticket, when you couldn't find a delivery ticket?

A Yes, sir.

Q After calling up the trucking company and requesting a delivery ticket or a copy of their delivery tickets, was there ever an occasion when they couldn't furnish you with one?

A Not that I remember.

Q What system did Paterno & Sons use in order to pay their bills?

A Well, they would say, "Well, we will pay" -- you know, they would give me a list of bills to pay and I would take them out of the folder and write out the checks.

Q Prior to your receiving the list of the bills that would be paid, would you prepare on a weekly or a monthly basis a listing of all the outstanding expenses?

MR. BRILL: Your Honor, I have sat back and not objected to leading --

THE COURT: Don't tell us about the past, Mr. Brill.

MR.BRILL: I object to the leading.

THE COURT: You object? Overruled.

A I am sorry?

Q Would you prepare on either a weekly or bi-weekly or monthly basis a listing of all the outstanding expenses of Paterno & Sons, Inc.?

A I don't remember that. I don't remember if I did.

Q Do you recall how it came about that the bills were selected for payment?

A No.

Q Do you recall who selected the order of payment?

A No.

Q Did you ever receive any instructions from anyone at Paterno & Sons, Inc. to prepare checks for the payment of trucking expenses where there were no delivery tickets attached to the invoices?

A No.

Q You are positive of that?

A I am pretty sure.

Q Mrs. Altro, did you testify before the grand jury on March 9, 1973?

A Yes.

Q And at that time were you shown a memorandum of an interview between yourself and Revenue Agent Ayres and Rizzo?

A Yes.

Q And did you read that memorandum of interview before the grand jury?

A Yes.

Q Were you asked these questions and did you give these answers on that day --

MR. BRILL: Page, please?

MR. SILVERMAN: Page 6, the first question at the top of the page:

"Q Were you introduced by Mr. Walter Ayres, Mr. Anthony Rizzo on 12/29/72?

"A Yes.

"Q They have written down a memorandum of that entry as to what you told them and I marked this grand jury exhibit No. 1 for this date. I marked that memorandum Exhibit No. 1, grand jury No. 1 for this date. I am going to hand you grand jury Exhibit No. 1 for this date and I am going to ask you to read it over, please, and tell me whether it is an accurate statement of what you told to them and whether it represents the truth in every respect.

"A (Witness reads document). Yes.

"Q Is it true in every respect?

"A Yes.

"Q Is what is contained in Grand Jury Exhibit No. 1 this date what you told Agents Rizzo and Ayres?

"A Yes.

"Q And is what is contained on Grand Jury Exhibit No. 1 of this date true in every respect?

"A Yes.

"Q And you read this over carefully, is that correct?

"A Can I just look at one thing? There seems to be something there I don't understand.

"It says here that the name Aurrichio that I don't remember receiving any of their invoices in the mail.

"Q Yes.

"A And I can't say that is absolutely true, because I don't remember, it might have been, I told him it might have been.

"Q You don't remember whether or not --

"A Right, there are so many companies, I can't remember that one specific name.

"Q You don't particularly remember that as receiving an invoice in the name of Aurrichio in the mail, is that correct?

"A Yes.

"Q So that clarification that you just put in there, is Grand Jury Exhibit No. 1 for this date completely accurate in every respect?

"A Yes."

Were those questions asked of you and did you respond with those answers?

A Yes.

Q I would like to show you this memorandum and ask youif that is the memorandum you were shown before the

grand jury on that date?

MR. BRILL: Could we come to the side bar, your Honor?

THE COURT: Well, I think what we will do, since it is five minutes to one, is stop for lunch and that will save you a trip to the side bar.

And let's plan to come back at 2:15, ladies and gentlemen.

(Jurors left the courtroom.)

THE COURT: Yes, Mr. Brill?

MR. BRILL: I was going to ask for an offer of proof in the absence of the witness.

THE COURT: Mr. Silverman?

MR. SILVERMAN: May the witness be excused, your Honor?

THE COURT: Yes.

Why don't we excuse you and please come back at 2:15.

(Witness left the courtroom.)

THE COURT: All right, Mr. Silverman.

MR. SILVERMAN: Your Honor, in view of the defendants' many requests for these offers of proof, I think it is an unfair burden for the government to have to continually give offers of proof. If the questions

that the government is asking are irrelevant, the Court will rule --

THE COURT: I will decide whether it is unfair. I know your burden, but I think it is a fair burden.

Now what are you planning to do with that memorandum?

MR.SILVERMAN: Well, since it is part of the grand jury testimony, your Honor, and she swore to its accuracy, her answer that she just gave is completely opposite to the memorandum.

THE COURT: Her answer with respect to what?

MR.SILVERMAN: Whether or not she, No. 1, had prepared any checks for signing when there were no delivery tickets attached to the invoices, and she says in here on the third page:

"When asked by Special Agent Ayres if she was instructed by anyone to issue the check, she stated that she must have been, as Mike Paterno would not sign a check without the appropriate delivery receipts. She said that George Denti must have instructed her to prepare the check. She concluded that she did remember that on occasions George Denti would instruct her to prepare checks without delivery receipts, and that he, George Denti, would explain the lack of substantiation to Mike Paterno."

THE COURT: I will allow you to let her read that to refresh her recollection, first of all, and then if she says she does not have this recollection, I don't think I am going to let you read that into the record, but let me think about it over lunch. Let's see where we go if she does not have her recollection refreshed in the way you claim to be correct.

As I think about it, maybe my other tentative ruling is wrong. Maybe I should let you read it in the light of her affirming it before the grand jury.

So my tentative pre-lunch view is that if it is necessary to read that last sentence that Mr. Silverman read to me, I will allow it.

Now I know you are in a hurry, Mr. rosenthal. I received an urgent message and I would like you to convey to my friend and brother, Mr. Justice Roberts the following: In order to try not to waste the time of jurors and parties in this court and in the court across the street, many of us here, including me, try very hard to take sentences before 10 a.m. and after 4:30 p.m. When that cannot be avoided we arrange the schedule the best way we can. If I had known in advance of Mr. Justice Roberts sentence proceeding with you, I would have bent every effort to accommodate him. I have 16 jurors sitting here, and

of all the things that don't impress me -- and please tell this to Mr. Justice Roberts -- it is a request that I send my 16 jurors to go sit in the hallway because the press is waiting to hear him impose sentence on somebody.

Now, I will convey that to him personally at the first opportunity, and in the meantime you might tell him that I send him that message indirectly, as I got the message indirectly from him that the people of the press are being inconvenienced because I am sitting on trial in the federal court.

MR. ROSENTHAL: Might I do that after he has pronounced sentence?

THE COURT: Yes, you may.

(Luncheon recess.)

AFTERNOON SESSION
2:20 p.m.

(In open court; jury present)

A N N E A L T R O resumed.

DIRECT EXAMINATION CONTINUED

BY MR. SILVERMAN:

MR. SILVERMAN: Your Honor, is my understanding correct that before the luncheon recess you ruled that I may be able to read a paragraph from this memorandum?

MR. BRILL: Oh, no.

THE COURT: I ruled that you should first see if it refreshes the witness' recollection, and I think the gist of it was that Mrs. Altro should be shown the passage that Mr. Silverman read to us for that purpose.

Is that right, gentlemen?

MR. BRILL: Yes, your Honor.

THE COURT: Show her the passage.

Have you established with Miss Altro that this is the statement that she identified and confirmed before the grand jury?

Is it, Mrs. Altro?

THE WITNESS: Yes.

THE COURT: It is?

THE WITNESS: Yes.

BY MR. SILVERMAN:

Q Mrs. Altro, I would like to refer you to page 3 of a memorandum of interview dated 12/29/72 which you have just identified, and ask you to read the first paragraph to yourself on page 3 of this memorandum.

THE COURT: You have read it?

A Yes

THE COURT: All right, what's your question?

Q Mrs. Altro, I'd like to ask you the question again as to whether or not on any occasions did you ever present -- did you ever prepare any checks payable to truckers where there were no delivery tickets attached to the invoices?

A I don't remember. I mean, I can't give you an answer.

Q Did you read that paragraph?

A Yes.

Q Does that refresh your recollection?

A Yes. But I don't remember now if this is the way it happened.

MR. SILVERMAN: Your Honor, at this time may I read that paragraph?

MR. BRILL: No,your Honor, I will object

to that. This is not this lady's document.

MR. SILVERMAN: This, your Honor, was a --

THE COURT: This is the document that as I recall Mrs. Altro described in the grand jury as being a correct account of the information she had given in an interview.

MR. BRILL: I think that's a correct statement, your Honor.

MR. SILVERMAN: That's correct, your Honor.

THE COURT: And given the foundation that we have discussed, including some things I have indicated were not necessary to produce before the jury, I am going to allow this prior statement to be adduced for what it may be worth.

MR. BRILL: Could we approach the side bar, your Honor.

THE COURT: Yes.

MR. BRILL: I think it has to be read.

(At the side bar)

MR. BRILL: I think, unless your Honor thinks I should hold this for cross, that to give a fair picture of the situation, this should be read together with paragraph 5 on page 1, paragraph numbered 5?

MR. SILVERMAN: Beginning with what word?

MR. BRILL: "When discrepancies occurred --"

THE COURT: Page 1, Mr. Brill said.

Do you want to read that, too?

MR. SILVERMAN: No, your Honor. This has nothing to do with the payments. It has to do with corrections made to invoices, paragraph 5.

THE COURT: All right, why don't you hold it for cross, Mr. Brill.

MR. BRILL: Very good, sir. Thank you.

(In open court)

Q Mrs. Altro, I'd like to read to you the paragraph on page 3:

"When asked by Special Agent Ayres if she was instructed by anyone to issue the check, she stated that she must have been, since Mike Paterno would not sign a check without the appropriate delivery receipts. She said that George Denti must have instructed her to prepare the check. She concluded that she did not -- she concluded that she did remember thaton occasions George Denti would instruct her to prepare checks without delivery receipts and that he [George Denti] would explain the lack of substantiation to Michael Paterno."

Now, is that statement true or untrue?

A I have to give youa true or untrue? I

don't remember.

Q What is it to the best of your recollection?

A Yes.

Q Is it true?

A Yes.

Q Now, will you please describe for the jury the circumstances under which you presented checks for the payment, that you had prepared, for Mr. Paterno's signature?

A Would you repeat that?

Q Would you please explain to the jury the circumstances surrounding, after you had prepared a check, filling in the payee and the amount, and had the corresponding invoices, what were the circumstances around the person signing the check, whoever the authorized signature was?

A I would take the checks up to Mike Paterno, or George would take them up and they would be signed.

Q Now, was there an occasion when you presented an invoice with the check already prepared except for the signature to Michael Paterno for signing when there weren't any delivery tickets attached to the invoice?

A No.

Q Was there ever a situation where you prepared a check for signing and you had an invoice that was not accompanied by delivery tickets that you gave to Mr. Denti?

A No. Ah --

Q You don't want me to read this paragraph again?

A No.

MR. BRILL: I object to that, if your Honor please.

THE COURT: Sustained. If you go back over the thing again, whether Mrs. Altro wants you to do it or not, I don't want you to do it.

MR. SILVERMAN: All right, your Honor.

Q Now, Mrs. Altro, you testified I believe this morning with reglation to how the bills were paid?

A Yes.

Q I would like to ask you the question again in that who selected and confirmed the order of payment in which all the bills would be paid?

A Mike and George.

Q And how was this done? What were the circumstances around the selection of the pavees, or the selection of payment of expenses?

A I don't know.

Q Did you prepare on a biweekly or monthly basis a schedule of all the outstanding existing expenses of Paterno & Sons, Inc.?

MR. BRILL: We have gone overthis earlier today.

THE COURT: Yes, I think so.

MR. SILVERMAN: Your Honor, there is an offer of proof. I can give it to you at the side bar.

THE COURT: How does this differ from what you want over before lunch?

MR. SILVERMAN: I'd like to approach the side bar.

THE COURT: All right.

(At the side bar)

MR. SILVERMAN: Your Honor, Mrs. Altro was interviewed last Tuesday in the presence of Agent Rizzo and Agent Ayres and Arthur Ferraro, Louise Ferraro's husband who represented Mrs. Altro at that time. On that occasion Mrs. Altro stated that she would prepare on a biweekly basis a list of all the expenses of Paterno & Sons, Inc. She would then present it to Michael Paterno who would select the order of payment depending

on the age of the bill and how much money they had in the corporate account.

He also selected the payment in terms of the size of the companies; smaller companies would be paid before larger companies.

She also stated at that time, your Honor, that material men would be paid after truckers because the truckers had labor expenses where the material men did not and needed the money on a quicker basis. That's what she told us on that date, your Honor, which is significantly different from what she is saying now.

THE COURT: What's the significance of all that for the case though?

MR. SILVERMAN: It shows Mr. Paterno's familiarity with the payment of the bills and that he himself selected the order of payment on which companies were paid.

THE COURT: Do you have any of those lists of payments?

MR. SILVERMAN: No, your Honor.

THE COURT: Okay, I will allow it.

MR. BRILL: Would your Honor hear me a moment on that?

THE COURT: Yes.

mer9 Altro-direct

MR. BRILL: I think anything so general as that creates a misimpression. If he had a specific matter to which he could point, it might be permissible -- and perhaps I wouldn't have an argument to make to your Honor -- but anything so vague as this from which the inference would be said to be permissible that you can now conclude that he picked these out because they were truckers and they were large and they should be paid first, referringto the five questioned truckers --

THE COURT: I don't see anything vague about it. I think it's quite specific. I have a list of 400 cases. I go over them one by one and decide when these are going to be tried, which would be his first, which one is later, which one is big and which one is little. I give my attention to that.

It would be hard to prove ignorance of any one of them that had been gone through the mill here, or claiming ignorance, and I think that's vaguely analogous to what Mr. Silverman is talking about.

MR. BRILL: I don't think that is a fair analogy because your Honor is a trained person and I don't think this young lady has the training on the basis of which she would be able to make the kind of distinction your Honor has made.

MR. SILVERMAN: Excuse me, Mr. Brill.

I am not going to ask her, your Honor, as to these five fictitious payees, only as to the order.

THE COURT: The practice.

MR. SILVERMAN: The practice.

THE COURT: I'll allow it.

MR. BRILL: Respectfully except.

(In open court.)

BY MR. SILVERMAN:

Q Mrs. Altro, on Tuesday of last week didyou appear at the offices of the United States Department of Justice on the 13th floor?

A Yes.

Q And at that time were you interviewed by myself, Mr. Ayres and Mr. Rizzo?

A Yes, sir.

Q And present during all that conversation with you was a gentleman named Arthur Ferrara, who is an attorney?

A Yes.

Q Were you asked a question by Mr. Ayres and did you respond to Mr. Ayres' question relating to the matter --

MR. BRILL: I thought this was a quote. He is startingout with a question, and I am asking if this is a quote.

THE COURT: Is this a quotation?

MR. SILVERMAN: No, your Honor.

Q -- in which you discussed with him the manner in which the order of expenses being paid?

A I don't recall.

Q Do you recall discussing with her or not larger

companies were paid before smaller companies at that time?

A No.

Q Do you recall discussing with her or not materialmen were paid before truckers?

A No.

Q Do you recall stating at that time to Mr. Ayres that truckers who had labor expenses were paid before materialmen?

A No.

Q Do you recall at that time telling Mr. Ayres that Mr. Paterno each month would select the order of payment of the bills?

A No.

Q Do you recall who at the firm selected the order of payment?

A No.

Q Did you select the order of payment?

A No.

Q Do you recall how often the bills were paid? Were they paid once a month or more often?

A More often.

Q Approximately how many times a month were bills paid?

A I don't recall exactly.

Q Were they paid on a daily basis or on a weekly

basis?

A I would say weekly.

Q And on a weekly basis when the bill was selected for payment who was the person at the firm who checked to see whether there were enough funds in the corporate account to cover those checks?

MR. BRILL: Just a moment. I object to that question, your Honor. It includes something which is not in evidence.

THE COURT: Which is?

MR. BRILL: His description of --

THE COURT: The basis of it?

MR. BRILL: Yes.

THE COURT: Yes; rephrase that.

Q Who at the firm was responsible for checking the balance in the checking account?

A George and I.

Q Did yourself or Mr. Denti -- withdrawn.

How often would you check the balance in the checking account?

A Approximately every day -- every other day.

Q In regard to the payment of expenses who was responsible to check whether or not there were sufficient funds in the account to cover those expenses?

A I was.

Q And were you the one at the firm who selected the order of payment?

A No.

Q Was Louise Ferraro the one who selected the order of payment?

A She wasn't there when I was there.

Q Do you know a woman by the name of May Nunkin?

A Yes.

Q Did she work for Paterno & Sons?

A Yes.

Q What was her function at the firm?

A Secretary. She did typing.

Q Do you know of your own knowledge whether she selected the order of payment?

A No.

Q Do you know whether of your own knowledge Mr. Denti selected the order of payment?

A No.

Q And do you know of your own knowledge whether Mr. Paterno selected the order of payment?

A No.

Q Was there any other office personnel during the period of time that you were working at Paterno & Sons,

Inc. other than the names I have just mentioned?

A No.

Q So you have no idea, then, who selected the order of payment, is that correct?

A Yes.

Q I would like you to open up the black folder that has the checks in them -- I believe the one to your left.

(Witness examines.)

Q I would like you to look at Government's Exhibits 46, 47 and 48 -- those three checks.

(Witness examines.)

A Which ones?

(Question read by the reporter.)

(Witness further examines.)

Q Did you look at those three checks?

A Yes.

Q Do you recognize them?

A My handwriting.

Q Is your handwriting on them?

A Yes.

Q Did you prepare those checks?

A Yes.

Q And the payee of those checks is Michael

Catenzaro, on all three of them, is that correct?

A Yes.

Q Do you recall what type of expenses these were issued for ?

A Trucking.

Q For each one of these checks was there a correspond-ngi invoice?

A I don't remember.

Q Before you prepared a check for the payment of any expenses, from what source did you get the amount that you put on the check?

A From the bill.

Q So is it accurate to state that there was an invoice that you prepared these from?

A Yes.

Q Now I would like you to look at the folder on your right.

(Witness examines.)

Q Turn to Exhibit 46-A.

(Witness examines.)

Q Does your writing appear anywhere on that exhibit?

A Where it says "Paid" -- that's my handwriting.

Q Is that in your handwriting?

A Yes.

Q Do you recall what type of expenses these checks were for?

A This is trucking, again.

Q I would like you to look in the check part, on your left -- Government's Exhibits 24, 25, 26, 27 and 29, and I ask you if you recognize those checks.

A (After examining) It's my handwriting.

Q Did you prepare those checks?

A Yes.

Q Did you prepare those checks from an invoice?

A Yes.

Q I would like you to be looking in the book on your right now -- invoices, Government's Exhibits 24-A, 25-A, 26-A and 27-A.

(Witness examines.)

Q Are there any writing on any of those exhibits in your handwriting?

A Yes.

Q On all four of them?

A Did you say 24-A?

Q 24-A.

A No, not on 24-A.

Q Is your handwriting on that?

A No.

Q How about 25, 26 and 27-A?

A Yes.

Q Do you recall what type of expenses they were issued for?

A Trucking.

Q Now I would like you to look at the checkbook -- at check Nos. -- Government's Exhibits 36, 37, 38 and 39.

(Witness examines.)

Q Are they in your handwriting?

A Yes.

Q And did you prepare those checks?

A Yes.

Q And they were for trucking expenses also?

A Yes.

Q I would like you to look in the invoice book, at invoices 36, 37, 38 and 39.

A (After examining) Yes.

Q Is there any writing on those exhibits in your handwriting?

A Yes.

Q Now with reference to Exhibit 38-A there is some red ink at the bottom of the page.

Could you please read what that says?

A This (indicating).

Q Yes.

A It says "O.K." and there are initials underneath.

Q What are those initials?

A George Denti.

Q Did you see Mr. Denti affix that to this page?

A I dont remember.

Q Was that on there at the time that you put the writing on this page that you wrote?

A I don't remember because I just entered this.

Q Do you have personal knowledge as to what that means?

A That he okayed this bill.

Q He okayed this bill.

A Yes.

Q And do you recognize his handwriting on that page?

A I assume that is his signature.

Q I asked you, do you recognize it as his initials?

A As his initials? Yes.

Q I would like you now to look at two other checks, Nos. 18 and 19.

(Witness examines.)

Q And I ask you if they are in your handwriting?

A Yes.

Q Did you prepare those checks?

A Yes.

Q The payee on those checks is Arthur Lazravitch, is that correct?

A Yes.

Q Do you recall the name Arthur Lazravitch?

A No.

Q Do you recall for what type of expenses these checks were issued?

A Truckers.

Q Mrs. Altro, at the time that you worked for Paterno & Sons, Inc. did you have an index or a telephone directory where you could keep telephone numbers of suppliers of Paterno & Sons, Inc.?

A Yes.

Q Will you please describe to the jury what it looks like?

A It was a Rolidex.

Q Where was it kept?

A On May Nunkin's desk.

Q On May Nunkin's desk?

A Yes.

Q Was that her Rolidex -- was it her Rolidex or the firm's Rolidex?

A No, it was hers, for her personal information.

Q That Rolidex contained the names of truckers who worked for Paterno & Sons, Inc.?

A Yes.

Q Do you know if it contained the name of Taff Trucking?

A I believe so.

Q Do you recall the name La Spina?

A Yes.

Q Do you know what type of firm La Spina was, what kind of services they performed?

A He was a trucker.

Q Was his name on that Rolidex?

A I don't remember.

Q Did you ever call Mr. La Spina or his firm?

A I don't remember.

Q Did you ever recall calling Mr. Minichino's firm?

A Yes.

Q Do you recall who you spoke to in that firm?

A Mrs. Minichino.

Q Do you recall if the name John Aurrichio was on that Rolidex?

A I don't remember.

Q Do you ever remember calling that firm or anyone

by that name?

A I don't remember.

Q Do you recall if the name Thomas Tuccella was on that Rolidex?

A No.

Q Do you ever recall calling Thomas Tuccella's firm?

A No.

Q Or anyone else by that name?

A No.

Q What about the name Arthur Lazravitch, do recall calling anyone from Arthur Lazravitch's firm?

A No.

Q Mrs. Altro, do you recall where the delivery tickets that were attached to the invoices were kept?

A They were attached to the invoices. They were kept there.

Q And after the expenses were paid, after the checks were paid, what did you do with the invoices with the delivery tickets stapled?

A We filed them away -- filed them.

Q And in what order would they be filed?

A In alphabetical order.

Q And would the file -- in what type of cabinet

or folder were they filed?

A In a metal file cabinet, in manila folders.

Q While you were working there were the invoices with the receipts stapled to them ever removed from the file cabinets?

A I don't remember.

Q Do you recall whether or not they were removed and put in cardboard boxes?

A No, I don't remember.

Q Mrs. Altro, I would like you to look at page 45 of your grand jury testimony dated March 9, 1973, starting on line 2, and read that full page to yourself, please.

A Yes?

Q Does that refresh your recollection as to what happened to those invoices with the delivery tickets attached to them?

A No. These are the cost sheets that I mentioned here. You're talking about the invoices.

Q With reference to the cost sheets, then, what happened to the cost sheets?

A We would put them -- they would be put away.

Q What would they be put in?

A In the cardboard boxes.

Q Where did you last see these cardboard boxes?

A In the office where I was.

Q What address was that?

A 204 City Island Avenue.

Q Would there be any notations or mark on the front of the cardboard boxes?

A I don't recall.

Q Do you recall how it came about that the cost sheets were removed from the filing cabinets and put in these cardboard boxes?

A Well, there wasn't any more room in the filing cabinets.

Q Now with reference to the invoices after the bills were paid, where were the invoices with the delivery tickets stored?

A In the filing cabinets.

Q Did there ever come a time when these invoices were removed from those filing cabinets because they were getting too crowded?

A I don't remember what happened to them.

Q Did you ever see any of the invoices or delivery tickets destroyed?

A No.

Q Did you ever remove, after the bills had been paid, the delivery tickets from the invoices and throw

them away?

A No.

Q Did you ever see anyone else do it?

A No.

Q After the checks were prepared for payment and after they were signed, what would happen to the checks at that point?

A I would get them back and I would write "Paid" on the invoices and the date and the amount, and then make out envelopes for the checks to be mailed.

Q And would you also stamp those envelopes?

A Yes.

Q At that time did you have a machine or did you have regular stamps?

A No, we had regular stamps.

Q Now do you recall making out an envelope addressed to John Aurrichio?

A I don't recall.

Q Do you recall making an envelope out addressed to a Michael Catenzaro?

A No.

Q Do you recall making an envelope out to an Anthony Ferrotta?

A No.

Q Do you recall making an envelope out to Arthur Lazravitch?

A No.

Q Do you recall making an envelope out to a Thomas Tuccella?

A No.

Q Do you recall any mail being returned to Paterno & Sons, Inc. that had been addressed to any one of those five individuals?

A No.

Q Were there ever occasions when these checks were not mailed?

A Yes.

Q What would be the circumstances in those cases?

A Well, the trucker might be coming to the office and we would hold it until he came or someone would take it on the job and give it to them.

Q Did you ever receive any calls from any trucks who are requesting payment?

A Yes.

Q What would you do in a situation where a trucker would call up and request payment for the services that he had performed?

A I would tell George that he had called.

Q Would you ever tell anyone else?

A No.

Q Did you ever tell Michael Paterno?

A I don't recall if I ever did.

Q How long a period did it take during the time that you were working there from the time that you received a trucking invoice and put a stamp mark on there "Received" until the time that the check was prepared for payment?

A For a trucker?

Q Yes.

MR. BRILL: I object to this as being vague and indefinite, your Honor.

THE COURT: Well, ask her first whether there was some regular period which she recalls.

Q Mrs. Altro, do you recall any particular period of time as a general rule that the company used during the time that you were working there for the payment of trucking expenses?

A We would usually pay them first.

Q And how long a period of time would that be?

A You mean from when we got the bill till we paid them?

Q Yes.

A As soon as we could.

Q How long would that be in terms of days or months?

A A week, two weeks.

Q What was the longest period of time that you can recall as to any trucker?

A I don't recall; I don't remember.

Q But it is approximately a week or two weeks; is that what your testimony is?

A Yes.

MR.BRILL: I object to that, your Honor. That is supplying an answer. She said she couldn't recall --

THE COURT: Well, let's have the testimony read.

Mr. Reporter, would you read the last several questions and answers.

(Record read.)

MR. BRILL: I am moving to strike the last question and answer.

THE COURT: Yes, I will strike the last question and answer because if you were just trying to get her to repeat the prior answer, we don't need it.

Go ahead.

Q Did you ever receive any telephone calls from any of the individuals known as Aurrichio, Lazravitch, Tuccella, Ferrotta and Catenzaro requesting payment of their truck-

ing expenses?

A I don't remember.

Q What is your best recollection?

A I don't remember.

Q Do you recall calling any of those people?

A No.

Q I would like you to turn to Government's Exhibit 24.

A What is that?

Q That is the check, and 24-A, which is the invoice.

What is the date on the invoice as to the work performed?

MR. BRILL: These are in evidence, your Honor. It seems to me like they can be looked at without taking up the time of the Court --

MR.SILVERMAN: I just have two examples, that is all.

THE COURT: I will allow it.

A March.

Q March of what year?

A 1968.

Q What is the date of the check? When the check was drawn?

A November.

Q That is an eight-month period between the bill and the payment?

A Yes.

Q Who is the payee on that check?

A Anthony Ferrotta.

Q Do you recall receiving a telephone call from Mr . Ferrotta or anyone else from his firm during that eight-month period requesting payment?

A I don't remember.

Q I would like you to look at Government's Exhibits 25 and 26, 25-A and 26-A.

On 25-A what is the date of the invoice?

A Bill for October 1968.

Q And on 26-A what is the date of that invoice?

A February 1968.

Q Who are the truckers involved in those two?

A Anthony Ferrotta.

Q On both invoices?

A Yes.

Q The first one is October 1968 and the second one is February 1968?

A Yes.

Q With reference to the October 1968 bill, by looking

at check Exhibit 25, what is the date of payment of that check?

A December 12, 1968.

Q That was paid approximately two months later?

A Yes.

Q Now in reference to Government's Exhibit 26-A, look at check 26, and I ask you when that check was paid?

A December 18, 1968.

Q That is a 10-month period, is that correct?

A Yes.

Q Could you explain how it came about that the first bill was paid after the second bill? The October bill was paid 12/12/68 and the February bill was paid 12/18/68 for the same trucker.

A I don't recall.

Q Do you recall the circumstances surrounding the payment of those bills?

A No.

MR. SILVERMAN: I have no further questions, your Honor.

THE COURT: All right, cross examination, gentlemen.

CROSS EXAMINATION

BY MR. BRILL:

Q With respect to those last two checks and invoices,

Mrs. Altro, can you say whether they were on the same job or different jobs?

A Well, it would say the job on the bill.

Q I beg your pardon?

A The job is on the invoice.

Q Right.

A No, they are not the same.

Q They are not the same jobs?

A No.

Q And was it the practice of the company to pay with respect to a job when the money came in on that job?

A Yes.

Q And if for some reason the money was held up, whatever the reason may have been, those who were entitled to be paid were held up until Paterno & Sons, Inc. received its money?

A Yes.

Q And would you say that would explain the difference with respect to those two invoices and those two checks and the question that Mr. Silverman just put to you?

A Yes.

Q And isn't it true that you have already given that explanation to both the Internal Revenue Service and the Department of Justice?

A I was never asked.

Q You were not asked?

A No.

Q Now, there was a system or practice that was followed by which payments of checks were made out, isn't that correct?

A Yes.

Q When a bill came in such as those which you have seen, would you check it against anything to see if it was correct?

A Yes. I wuld check it against the cost sheet.

Q Against cost sheets?

A Yes.

Q Or in some instances delivery tickets?

A Yes.

Q Is it true, Mrs. Altro, that before you went to check these you put a date or a stamp, whether it be by stamp on which you filled in the date or by hand on which you filled in the date, showing the receipt of the bill?

A Yes.

Q And after you did that would you enter it into any particular book?

A Into the purchase journal.

Q Into the purchase journal?

A Yes.

Q And was there a purchase journal except all of the time that you were there?

A Yes.

Q And to your knowledge were you shown purchase journals that had been kept by your sister before you came there?

A Yes.

Q By the way, is Mr. Ferraro, about whom you were questioned, your sister's husband?

A Yes.

Q He is your brother-in-law, the attorney?

A Yes.

Q Now, I would like to show you some of these purchase journals.

MR. BRILL: Would your Honor indulge us a moment?

THE COURT: Yes.

(Pause)

MR. BRILL: May we have these marked for

identification, your Honor.

With your Honor's permission could we mark them separately for each fiscal year?

(Defendants' Exhibits N, O, P, Q and R were marked for identification)

MR. BRILL: Your Honor, I'd like to say that there is an identification sheet on the front of each one of these batches which was put on for purposes of simplifying it. If your Honor wants it removed, we can remove it.

For example --

THE COURT: Anything that's agreeable with counsel is all right with me.

MR. SILVERMAN: Your Honor, I am not going to start going through this now and wasting the Court's time.

MR. BRILL: These are all those that were examined by Mr. Rizzo, according to his testimony, and they are some of the records I asked him about, and I want to put them into evidence.

MR. SILVERMAN: If he wants to put them in evidence why didn't he put them in evidence when Mr. Rizzo was here?

MR. BRILL: I didn't have them here.

THE COURT: Let's see, Miss Altro has forgotten a lot of things. If she can identify them and authenticate them, they go into evidence; if she can't, then they won't.

MR. BRILL: Then I will call Mr. Rizzo.

THE COURT: All right.

MR. SILVERMAN: Excuse me, are these for five years?

MR. BRILL: Yes.

MR. SILVERMAN: It's my understanding, Mrs. Altro did not work at the firm for five years.

THE COURT: Let's see what he does and what he proposes.

Q Now, Mrs. Altro, did you serve as a bookkeeper for Paterno & Sons, Inc. for the period beginning March 1, 1969 ending February 28, 1970?

A Yes.

Q And as part of Exhibit R, do you recognize these sheets which are at the bottom of this pile?

A This is all my handwriting.

Q And what are those sheets?

A This is the purchase journal.

Q And are the other papers which are annexed and part of this exhibit, the bills which are reflected in

the purchase journal for the period that I have just described? Would you check chem against the purchase journal, please, or spot check them?

A Yes.

MR. SILVERMAN: Your Honor, if I may save the Court's time, there is no question that what Agent Rizzo identified as the checks and invoices that are in evidence where the same checks and invoices that he received from the purchase journal.

If that's Mr. Brill's point, we are willing to agree that that is the case. That's how he found out about those facts and figures.

THE COURT: Are you willing to agree that that can go into evidence?

MR. SILVERMAN: If those are the originals, I have the copies here.

MR. BRILL: All of these are original documents, Judge. Purchase journals --

MR. SILVERMAN: We will stipulate to the purchase journal, your Honor. I have copies right here of the whole purchase journal.

MR. BRILL: It's my recollection that he said that he looked at the invoice as well.

MR. SILVERMAN: The invoices of the five

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truckers, your Honor.

MR. BRILL: No, he selected five from all the invoices.

MR. SILVERMAN: If these invoices, your Honor, are the invoices whose payments are reflected in the purchase journal, then we have no objection to that.

THE COURT: Is that what they are?

MR. BRILL: That's my understanding of it, Judge, yes, sir.

THE COURT: May it be received, then?

MR. SILVERMAN: It may be received, your Honor, subject to Mr. Rizzo going through, not at the Court's time, these invoices and checking whether or not these are the ones that are reported in the purchase journal.

MR. BRILL: I would like to add, your Honor, that these come within the heading of equipment rentals and that included the truck rentals about which Mr. Rizzo testified.

THE COURT: Well, if they do, Mr. Silverman says there is no objection to their being received. But I don't think the jury and I ought to sit here while Mrs. Altro goes through them sheet by sheet.

MR. BRILL: No.

THE COURT: To see whether she can remember them. So perhaps I think there is something to be said for your following Mr. Silverman's suggestion, that can be checked overnight or over two nights before Wednesday by Mr. Rizzo and if they are received on that basis, fine, and if they are not, either one of you may recall Mrs. Altro or take some other steps.

MR. BRILL: All right, sir.

I will just have her identify each of them though.

THE COURT: All right.

MR. BRILL: If that's unnecessary, I won't do it.

MR. SILVERMAN: I don't think it's necessary because the government is contending that the amount of invoices and checks and expenses that are included in the tax returns were the amounts that were included in the books. There is no question as to that being raised.

THE COURT: All right, let's --

MR. BRILL: I recall a couple of exhibits --

THE COURT: There is no point in her identifying a piece of paper. If she is not going to go through all of them you are not going to get your objective.

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Let's let it lie in abeyance and between now and Wednesday morning you and Mr. Silverman will agree or not.

MR. BRILL: I want her to identify what she can identify.

THE COURT: I don't think we ought to sit here while she goes through that 16 and a half inch pile of papers, one by one. I am counting the pile she has in front of her. I just think that's a wasteful procedure and we will be here all the rest of the day.

MR. BRILL: All right.

THE COURT: So I think you should not do that. Since you solicited my view very kindly, I am giving it to you.

MR. BRILL: Thank you. I appreciate it.

May I merely identify these then for the record as being, in addition to Exhibit O, which the witness has -- not O, I am sorry -- Exhibit R --there is Exhibit Q for the fiscal year March 1, '68, to February 28, '69; there is Exhibit P for the fiscal year March 1, '68 to February 28, '68; Exhibit O for the fiscal period March 1, '66 to February 28, '67; and for the fiscal period March 1, '65 to February 28, '66, being Exhibit N for identification.

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THE COURT: Okay, let me requestthat counsel get together with Mr. Rizzo and between now and the commencement of the court day on Wednesday the 13th see that these have been gone over and that you have your positions in order on whether they might be received.

MR. SILVERMAN: Yes, your Honor.

Q Now, in addition to the purchase journal, did you keep any other books?

A Yes. We had a general ledger.

Q General ledger?

A And -- I don't recall.

Q Cash disbursements?

A Yes, cash receipts.

Q And cash receipts?

A Yes.

Q And what was the other, general journal?

A Yes.

MR. SILVERMAN: Your Honor, at this time the government would like an offer of proof at the side bar as to allthese documents being marked.

THE COURT: Are you about to offer those various exhibits?

MR. BRILL: I am, your Honor.

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THE COURT: Mr. Silverman requests an offer of proof at the side bar. Let's have it.

(At the side bar)

MR. BRILL: These are the books and records, your Honor, which Mr. Rizzo, from which Mr. Rizzo testified he finally prepared Exhibits 173 -- 172 and 173 which were summaries extracted from Exhibit A for identification which contained entries copies from these original books and records.

Your Honor will recall that I attempted at thattime to introduce Exhibit A for identification. The prosecution objected on the ground that they were not the best evidence. Your Honor properly sustained that objection and so I resorted to the best evidence and have obtained the original books of entry which were copies by Mr. Rizzo.

That's what these are.

THE COURT: Yes, but that's not an answer to the question. The question is what's the purpose of it?

MR. BRILL: The purpose is to demonstrate with respect to the summaries our side of what the picture is, and there will come a time, appropriately, when I will be able to establish by the use of these

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original books and records what the picture was with respect to the disbursements that were made.

THE COURT: To whom, to the five named truckers?

MR. BRILL: Among others, yes.

THE COURT: Through whom are you going to do that?

MR. BRILL: I am going to do that through a witness that I have.

THE COURT: Introduce them at that time not with this lady.

MR. BRILL: That witness can't testify to these being the original records. That witness will have examined these records but that witness can't identify them as being the original records.

Now, in view --

THE COURT: How will that witness have knowledge about what the records are in a body if he or she can't identify what they are?

MR. BRILL: That witness will have examined those records and will then be able to tell your Honor and the jury what I want to elicit by reason of that examination.

THE COURT: As an expert?

MR. BRILL: Yes.

THE COURT: Give me an example.

(In open court)

THE COURT: All right, ladies and gentlemen, take a five-minute recess.

(Jury left the courtroom)

THE COURT: All right, gentlemen, why don't you go back to counsel table and we will resume.

All right, Mr. Brill, give me an example of what you are talking about.

MR. BRILL: Could I go back to the testimony and deal with that instead of a hypothetical, Judge? Because I think I can do that more effectively.

THE COURT: I don't care what you deal with. You are asked for an offer of proof. I didn't ask for this hypothetical. You put it to me. Now I want something that's not hypothetical. I want something concrete.

MR. BRILL: Mr. Rizzo was permitted to testify with respect to percentages based upon his summaries, extracted from his copy of Exhibit A of the books and records which he said he examined for the period beginning March 1, '65 through the end of the fiscal year February 28, 1970.

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He testified that of the total amount -- and I don't recall what they were for each of the years -- X per cent went to these particular five truckers whose invoices he selected when he went through his audit beginning with the first three months at the time when he was there in January, February, March of 1971.

That presents one side of the picture. My purpose is to present the whole picture. I think that's a partial picture. That was why I objected to it at the time. And I want to present the whole picture.

THE COURT: I don't even know what that means. He presented certain percentages, X.

MR. BRILL: He did.

THE COURT: What are you going to present that's different? Talking to me about part of the picture and the whole picture doesn't tell me anything. Confucius isn't even in good order at home these days let alone here. So let's be clear what you are talking about.

MR. BRILL: All right.

He took the general heading --

THE COURT: I know what he took. Tell me

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what you are going to show from these books and records.

MR. BRILL: I am going to try and show what percentage of the truck rentals was the amount of the money and whatever the amount of money spent on the truck rentals based upon the figures that he examined.

THE COURT: For these five names?

MR. BRILL: No, for all of them.

THE COURT: You want to show that it's a smaller or a larger percentage than they show?

MR. BRILL: I don't know what the percentage is, Judge.

THE COURT: I don't know what difference it makes, and on this offer of proof, this pile of books is excluded, because I don't see any earthly utility in what you have just said to me and with all respect to you, Mr. Brill, I do not at this moment believe you know what you think you are going to show from them, because you and I have dealt together for long enough for me to know that if you have some proposed thing to prove, you can make clear to me what it is, you have utterly failed now, and if you figure out something you mean to prove, I will let you show me what it is, but I am not going to let a pile of books come in --

MR. BRILL: I have no deisre now to make a

disclosure of what I am going to establish, if I am permitted to establish it. I know what I want to establish, and I believe --

THE COURT: You should have told me that in the first place. Whenever Mr. Silverman has been asked for an offer of proof, sometimes as recently as this afternoon under protest, I have put it to him to give it, and I think the same thing is owed to him on the rarer occasions when he asks you for an offer of proof.

And if your response is, as it finally is now, you don't want to tip your hand, then I don't want to let in a pile of books. When you are ready to let me know what it is you are going to show through those books, I will be ready to decide whether they should be permitted to add to the bulk of my record.

We will take two more minutes and then we will proceed.

(Recess)

(Still in the absence of the jury.)

MR. BRILL: Your Honor, I expect to offer proof which, in substance, I believe will show that the expenditure with respect to these particular people, in the light of the jobs that they were on, where they were done and at the times they were done, had to be made -- and I can only do it by, in one instance, for exmple, through an accountant expert, such as Mr. Rizzo is supposed to be an accountant expert, who testifies to his examination on the records and on the bills, and he separates the truckers' bills from the equipment rental bills so that he can allocate thatportion of the expenditure to truckers' bills, and that, coupled with the other proof which I expect to develop, will demonstrate that the expenditures were properly made.

THE COURT: I do know how an expert can tell you that. The issue herehas been made to emerge, and the question is whether these truckers exist.

MR. BRILL: That is not the issue.

THE COURT: It seems to me that is the whole thrust of the government's case.

MR. BRILL: That is true --

THE COURT: There is nothing else to it.

MR. BRILL: That is true but that is not the real issue.

THE COURT: But if they don't exist what is an expert going to tell us about that.

MR. BRILL: Even if they do not exist the government could lose.

THE COURT: How?

MR. BRILL: Because they have to bring home to the defendants knowledge and intent that they did not exist, and an expert can show --

THE COURT: Yes?

MR. BRILL: -- an expert can show, based upon the other proof which I expect to offer, and which I hope will be received -- the accounting expert will show that what was spent as to the total, not in the light of the equipment rental expense but with respect to truckers' expenses -- that is what we are concerned with --

THE COURT: An expert will show what?

MR. BRILL: How much was spent for truckers.

We don't have that.

THE COURT: I am sorry.

MR. ROSENTHAL: Will your Honor give me a moment?

(Mr. Rosenthal confers with Mr. Brill off the record.)

MR. BRILL: (to Mr. Rosenthal) I thought I told the Judge that.

We would also show that the amount of trucking done was necessary in order to accomplish the job. That could be through another expert, and it may very well be through another expert.

THE COURT: And he needs these books to do it.

MR. BRILL: No, the second expert would not need the books to do it.

THE COURT: But the first expert does.

MR. BRILL: But the first expert does.

THE COURT: How?

MR. BRILL: In order to separate the trucking bills from the equipment rental bills. There is a difference.

MR. SILVERMAN: Your Honor, may I be heard on just one point? Agent Rizzo testified and was cross examined for approximately one day. At the very end of his testimony he testified to a percentage -- I don't have it in front of me -- that percentage that he testified to, your Honor, related to the year 1969, I believe, that out of $156,000 in total rental expense, which is not being contested, and the approximately $40,000 of payments made to these particular truckers, the five truckers, he approximated that it was approximately 25 per cent of the total rental equipment expense listed

on the returns. Now if Mr. Brill is contending that those figures are not accurate, then we have not been provided with all the checks payable to these people and all the equipment rental expenses. If the amount listed on the return and the amount listed to these five truckers is accurate, there is no contention as to that, and that is the percentage, the 25 per cent of the total year's equipment rental expenses.

THE COURT: Let me say this, at this moment I must say that I do not understand -- and I take the liberty of believing the jury does not understand -- what these books can possibly be for, and based on the discussion, which was meant to be enlightening, I remain unenlightened. If you simply want to authenticate these books now, would you like to do it?

MR. BRILL: I would like to do it.

THE COURT: Let us see if she can do that in the absence of the jury -- if that is your only problem you do not need to prove anything through the books. Let us see if she can authenticate it.

MR. BRILL: Very well.

THE COURT: Present it to her.

MR. BRILL: Yes, your Honor.

MR. SILVERMAN: Your Honor, may I see the one

that she has already identified? That is the purchase journal, and the amount.

THE COURT: I don't know that she has identified it.

MR. BRILL: She hasn't. I will have to get this authenticated.

(Defendants' Exhibits U and V were marked for identification.)

THE COURT: Let me caution Mrs. Altro in the absence of the jury, since I have noticed that you don't remember a great many things, Mrs. Altro, if you are going to identify these books be sure you remember and that you really can identify those very books.

THE WITNESS: Yes, sir.

MR. BRILL: This is for the fiscal year ended --

THE COURT: She has already done that.

MR. BRILL: These are some of the bills that go with this, Judge.

THE COURT: Go ahead.

BY MR. BRILL:

Q Mrs. Altro, was it the regular course of business of Paterno & Sons, Inc. to keep a purchase journal?

A Yes.

Q Do you understand that?

A Yes, sir.

Q And was it the regular course of business of Paterno & Sons, Inc. to make entries in that purchase journal?

A Yes.

Q And were those entries made at or about the time of receipt of the bills?

A Yes.

Q And were those bills that came to Paterno & Sons, Inc. in the regular course of business?

A Yes, sir.

Q And amongst such bills, for example, are these for the fiscal year ended February 28, 1970 which are now, all together with the purchase journal sheets, marked Exhibit Q for identification?

THE COURT: Now look, Mr. Brill, Exhibit Q is among the five that I put off to Wednesday morning.

MR. BRILL: I think it is only to authenticate them.

THE COURT: No, we put it off to Wednesday morning.

MR.BRILL: Oh, all right.

THE COURT: You are supposed to take care of that with Mr. Silverman and Mr. Rizzo. It is these other books that led to our discussion.

MR. BRILL: Oh, allright; I misunderstood, your Honor.

THE COURT: Please get to it.

MR. BRILL: All right.

THE COURT: We are taking care of the others on Wednesday.

MR. BRILL: I am not going to separate them this time, Judge. It runs past the period.

I am going to deal only with that portion that relates to the period.

BY MR. BRILL:

Q I show you this book marked Defendants' Exhibit S for identification, and I ask you if you have -- to tell us whether you have seen it before (handing).

Will you look at it, please.

(Witness examines.)

Q Do you recognize some of your handwriting there?

A Not yet.

(Witness examines.)

THE COURT: I did not hear her answer.

(Record read by the reporter.)

THE COURT: Okay.

(Mr. Rosenthal and Mr. Brill confer off the record.)

THE COURT: Gentlemen, I do not like you to have a discussion with the witness.

MR. BRILL: No, we are not.

Q Was it the regular course of business of Paterno & Sons, Inc. to keep the general ledger?

A Yes.

Q And was such a ledger kept in the regular course of business?

A Yes.

Q And were entries made in it at or about the time of the appearance of the events recorded in it?

A Yes.

Q I show you Exhibit T for identification and ask you to tell us if you recognize it (handing to witness) -- if you recognize it as being one -- as the general ledger kept in the regular course of business by Paterno & Sons, Inc.?

A Do you want to know if my handwriting is in there?

Q Well, do you recognize thebook or the pages as being a book in which records were made in the regular course of business?

A (After examining) It looks like it.

THE COURT: No, that is not the way to answer it. Do you recognize that?

THE WITNESS: No.

Q You don't recognize it?

A No.

Q Do you recognize any of your handwriting in it?

A No.

Q Do you recognize your sistern's handwriting in it?

MR. SILVERMAN: Objection.

THE COURT: Sustained.

Q I show you this book, Exhibit B for identification, and ask you if you recognize it as a book kept in the regular course of business by Paterno & Sons, Inc.

A This is my handwriting.

Q And that book is called what?

A This is the accounts payable.

Q Is it part of the general ledger?

A Yes.

Q Is this the general ledger?

A Yes.

Q And had you seen it at the offices of Paterno & Sons, Inc.?

A Yes.

Q And you say you made entries in it?

A Yes, this is all my handwriting.

Q And were those entries made in the regular course of business of Paterno & Sons, Inc.?

A Yes.

Q And were they made at or about the time of the occurrences recorded?

A Yes.

Q All right. Now --

MR. SILVERMAN: Are we going to take them

one book at a time?

MR. BRILL: No.

THE COURT: Are you offering that?

MR. BRILL: I though we were just authenticating them now.

THE COURT: I don't know if they are looking at a couple of pages and identifying her handwriting authenticity.

Is that all your handwriting?

A Not the whole book.

THE COURT: Just certain pages of it?

THE WITNESS: Yes, because I wasn't here.

THE COURT: Unless you identify those pages.

MR. BRILL: I am going to identify them through the next witness.

THE COURT: Why don't you stop?

MR. BRILL: I did.

THE COURT: Why don't you stop this whole business?

MR. BRILL: Part is in her hand and part in the other lady's hand.

Isn't that right?

MR. SILVERMAN: If that's a question to me, I don't know, your Honor, I didn't work there.

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MR. BRILL: I have no other questions.

THE COURT: If that's it, then you can show that they are all in a particular person's hand, I suppose that will authenticate it.

MR. SILVERMAN: I would like it then clear on the record which pages she is identifying as in her handwriting. It would seem to me that it was only very few pages out of that multi-page volume.

Q Willyou pick out what you wrote, if you can here?

A There are quite a few.

THE COURT: I am not going to allow this. What you are going to do is recall these people in your own case if that's what you are offering it for.

MR. BRILL: All right.

THE COURT: And prepare them in advance because we can't have the jury sitting in that stuffy jury room while we go page by page through these books and that's a sample disposition of your whole problem. If you wantthem to authenticate them, call them as your witnesses.

Okay, let's proceed.

Let's get the jury back in.

(Jury present)

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MR. BRILL: May I have that document that you showed to the witness, please, Mr. Silverman, 35?

May I have this marked for identification, please, your Honor.

MR. SILVERMAN: It's my exhibit.

MR. BRILL: I ask it be marked for identification for the defendant.

(Defendants' Exhibit W was marked for identification)

Q You were shown this document, Exhibit W for identification, by Mr. Silverman, is that correct?

A Yes.

Q Does your signature appear anywhere on that document?

A No.

Q Did you prepare that document?

A No.

Q Or any part of it?

A No.

Q And these notations that are made on the second page in which there is a name and initials, are any of those your handwriting?

A No.

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Q And you were shown this document when you were before the grand jury in March of 1973, is that correct?

A Yes.

Q Now, at that time, Mrs. Altro, you were asked to read this document now known as Exhibit W for identification, right?

A Yes.

Q And today you were shown two pages I think which you were asked to read to yourself?

A Yes.

Q Do you recall that?

A Yes.

Q Now, at the time that you testified with respect to this, were you nervous?

A Yes.

Q And did you feel that you were under pressure?

A Yes.

Q And you responded to the questions as they were put to you as bestas you could, is that correct?

A Yes.

Q Were you, when you were referring to this document, and specifically with respect to materials that the job costs sheet that Mr. Silverman asked you about --

were you told to calm down and think about how it was done?

MR. SILVERMAN: Objection, your Honor. If heis referring to the grand jury testimony Mr. Brill knows the proper way to ask about it.

THE COURT: Yes, sustained.

Q Were you told --

THE COURT: If you are going to refer to grand jury transcript, refer to it in the usual way, Mr. Brill.

Q Do you remember being asked about what happened to the job cost sheets?

A Yes.

Q And do you remember that you were asked about that today by Mr. Silverman?

A Yes.

Q Except that he referred to them as receipts?

A Yes.

Q Right.

A Yes.

Q And you were then shown a page of the transcript of your grand jury testimony?

A Yes.

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Q And you pointed out that that referred to the job cost sheets?

A Right. Yes.

Q At that time were you excited when you were --

MR. SILVERMAN: Objection, your Honor.

MR. BRILL: When she was before the grand jury.

A Yes.

Q And did you feel under pressure?

A Yes.

Q And did you indicate that at the time?

A I was nervous, yes.

Q And were you told by the prosecutor who questioned you then to calm down?

MR. SILVERMAN: Objection, your Honor.

THE COURT: Mr. Brill, do you have the transcript there?

MR. BRILL: Yes, sir.

THE COURT: If you are going to refer to things that were said on it, why don't you read them?

MR. BRILL: All right, I will be glad to.

MR. SILVERMAN: I believe it's only proper to read them if the witness does not answer in accordance

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with what's in that grand jury testimony. He hasn't asked the question yet to get the negative answer.

MR. BRILL: I frankly don't understand.

THE COURT: I don't know what you mean.

MR. SILVERMAN: Your Honor, before Mr. Brill is going to attempt to cross-examine her about what she said before the grand jury, he should ask her what she said before the grand jury and if she recalls. If she doesn't,then he can use it to refresh her recollection.

THE COURT: Are you going to try to show some inconsistency between her present testimony and the grand jury testimony?

MR. BRILL: No. I was trying to show what her state was and she was told to calm down.

THE COURT: What difference does that make as to whether she is now telling the truth, which is what we usually refer to a grand jury transcript for? You are cross-examining.

MR. BRILL: I am trying to bring it all out.

THE COURT: Bring what all out?

MR. BRILL: Whytever the facts were.

THE COURT: All right, objection sustained.

Q When you had a conversation with Mr. Ayres

and Mr. Rizzo in December of 1972, which is now recorded and is Exhibit W for identification, where did it take place?

A In my home.

Q And was your brother-in-law present at the time?

A No.

Q Besides Mr. Rizzo, Mr. Ayres and yourself, was anyone else present?

A No.

Q Had you been informed before their arrival that they were coming?

A Yes.

Q And did you say that they could come?

A Yes.

Q And you responded to their questions at the time?

A Yes.

Q And they made notes, did they?

A Yes.

Q Did they ever show you those notes?

A I think when they finished they did.

Q The notes that they wrote?

A Yes.

Q In longhand?

A Yes.

Q When was the last time you saw them?

A I don't recall.

Q But these are not the notes that you saw, are they, this typewritten paper?

A No.

MR. BRILL: Are there such notes? I call for the production of them.

MR. SILVERMAN: Your Honor, it's clear that this memorandum wasn't typed in the home, it was prepared from the notes.

MR. BRILL: I want the notes.

THE COURT: Do you claim they are 3500 material?

MR. BRILL: I do, sir.

THE COURT: Did the notes exist from which that typewritten memorandum was paid?

MR. SILVERMAN: I have no idea. If you want I can inquire of the agents.

THE COURT: All right, Mr. Silverman will inquire. Go ahead with the cross-examination, Mr. Brill.

MR. SILVERMAN: Excuse me, your Honor, I

am informed by Mr. Ayres that there are no notes and that the notes of preparing this statement and being checked were discarded. It's the usual practice.

MR. BRILL: Does that mean destroyed?

MR. SILVERMAN: That means destroyed.

MR. BRILL: All right, I will take that.

Q Now, was there a procedure with respect to the preparation of checks and presentation of those checks for signature by a person, an officer authorized to sign them?

A Yes.

Q Was the invoice put together with the check at the time that the check was presented to the person who was authorized to sign them.

A Yes.

Q And as part of the other material of that material, was anything else presented to the person who was supposed to sign them?

A I don't -- I don't understand what you mean.

Q All right. You told us earlier that for the most part checks were signed by Mr. Michael Paterno?

A Yes.

Q Those were checks to vendors and persons who performed services, correct?

A Yes.

Q Now, at the time when you presented an invoice to him with a check, did he require that you present anything else to him?

A It had to be backed up or it had to be okayed.

Q What do you mean by backed up?

A If it was a trucker it had to have receipts or any receipts that were given to the job for this company.

Q Or what else?

A Had to be attached to the invoice.

Q Or what else?

A That's all.

Q Cost sheets?

A Well, it was taken from the cost sheet, yes.

Q When a ticket or receipt came in was it checked against anything?

A It was checked against the cost sheet and then against the invoice.

Q And would that be the material that you call backup material presented to Mike Paterno when you gave himthe check to sign?

A Yes.

Q Would Mike Paterno sign a check for which

there was no backup material?

A No.

Q During the period of your employment there as a bookkeeper with respect to every check that you presented to him, did he ever sign a check without backup material of one kind or another?

A No.

Q If there was no document in the office at the time, would you then call the super on the job to get backup information?

A Yes.

Q And would you then indicate that that had been okayed by that super?

A Yes.

Q And would you so advise Mike Paterno?

A Yes.

Q Now, were there differences between the cost sheet or the receipts and the invoice, was something done with respect to the invoice before a check was made out?

A Well, both of them had to correspond, the backup and the invoice.

Q And if there were adjustments to be made they would be made on the invoice?

A If the backup was right, yes.

Q Yes.

A Yes.

Q And then the check would be for the amount of the invoice as adjusted, is that correct?

A Yes.

Q Even in those cases would Mike Paterno sign a check without backup material?

A No.

Q To your knowledge did he ever sign a check during the entire period of your employment from May 1968 through whatever that date was in 1970, did he ever sign a check to a vendor or a trucker without backup material of some kind?

A No.

Q I didn't hear you.

A No, he would not sign.

Q Now, do you recall that every check that he signed was actually mailed? In other words, was every single check mailed out?

A I don't know.

Q Do you have any idea of the number of checks that you presented for signature that were signed either by Mr. Cohill or Mr. Paterno during that two and a half year period whatever it was?

A No.

Q Was it a large number?

A In all the time that I worked there?

Q Yes.

A Yes.

Q Would it be thousands of checks perhaps?

A I am sure, yes.

Q And is it true, Mrs. Altro, that many times truckers would phone in and say they were coming in to pick up their checks?

A Yes.

Q And is it true also that many times truckers would phone and ask that checks be sent out to the job?

A Yes.

Q And to your knowledge were checks actually sent out to the job?

A Yes.

Q Now, at City Island, what was the layout of the offices? How many floors did the company occupy?

A Two.

Q And on what floor did you work?

A First floor.

Q And what floor was Mike Paterno's office?

A On the second floor.

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Q And when you brought things to be signed by him, he questioned you about them?

A If he had any questions, yes.

Q And would he sign them until he was satisfied either by your answers or the material that you showed him?

A Then he would sign it, yes.

Q After that he would sign them.

And you would go up to his office with those checks to get them signed?

A Yes.

Q You told us earlier that Tom Cohill was also an officer of the company, is that right?

A Yes.

Q And that he also was authorized to sign checks?

A Yes.

Q Now, to your knowledge, did Tom Cohill sign any checks without backup?

A No.

Q Was that the policy as laid down by Mr. Paterno?

A Yes.

Q Can't hear you.

A Yes.

Q That in order for a check to be signed and delivered to the pavee there had to be backup material or proof of the obligation to pay, is that correct?

A Yes.

Q Do you have any idea of the number of truckers who was employed by Paterno & Sons, Inc.?

A No.

Q Was it the policy of Paterno & Sons, Inc. to pay as soon as it could with the proceeds, the money it received from the job that it was working on?

MR. SILVERMAN: Objection, your Honor.

THE COURT: On what ground?

MR. SILVERMAN: She already testified she had no personal knowledge as to who selected the expenses and in what order they were selected, so she would have no basis to form that conclusion.

THE COURT: Yes, that seems right, Mr. Brill, unless you can establish that it turns out she did know who did this. I don't know how she could know.

Q Now, you were asked if you could recall phone calls from certain persons whose names were given to you, five truckers whose names were listed for you?

A Yes.

Q And you said you could not?

A No.

Q Can you, as a matter of fact, recall the names of other truckerswith whom you did business?

A No.

Q Is it true that it was not uncommon for truckers to be held off for some time when money had not come in on the job?

MR. SILVERMAN: Objection, your Honor.

THE COURT: You better lay a foundation for that and not put it in the passive mood, Mr. Brill. Ask her if she knows who made these determinations, and then you may proceed to find out if she knows what they were.

MR. BRILL: Did you hear what the Judge just suggested to me?

THE WITNESS: Yes.

MR. BRILL: I will try to follow that.

Q Do you know who made the decisions as to what truckers would be paid at any particular time?

A No.

Q Are you able to tell us if you remember what truckers called the offices at any time?

A I don't remember who they were.

Q Is it true that there were so many truckers that you couldn't remember a specific name and a particular time?

MR. SILVERMAN: Objection, your Honor. What is he referring to, now, or during that period of time, or when? I don't know what Mr. Brill --

THE COURT: Yes, I don't think it is a good question, Mr. Brill. She said she doesn't remember names and she doesn't remember how many there were.

Ask her something else.

MR. BRILL: All right, I think that covers it.

Q Do you remember whether Mike Paterno ever gave you any instructions to call any truckers?

A No.

Q Do you know whether from time to time Mike Paterno went out to the job sites?

A Yes.

Q And did he tell you he was going to the job sites?

A Yes.

MR. BRILL: I think that is all I have.

CROSS EXAMINATION

BY MR. ROSENTHAL:

Q Mrs. Altro, I believe you told us this morning that if you received an invoice and you didn't find any truck tickets, or whatever you did call them, on the cost sheet, you would then check the cost sheet itself to see whether there was any entry?

A Yes.

Q And if the cost sheet reflected an entry you

would make an note of that?

A Yes.

Q Is that right?

A Yes.

Q And then it would not be necessary for you to call the trucker to get any backup sheets, would it?

A If it was on the cost sheet.

Q As long as it was on the cost sheet?

A Yes.

Q And I think you also told us this morning or early this afternoon that you tried to pay bills within two weeks or thereabouts, particularly truckers because they had labor costs and the like?

A Yes.

Q Now, when I say you tried, you mean the firm tried?

A Yes.

Q You were there during 1968, weren't you?

A Yes.

Q From May on at least?

A Yes.

MR. ROSENTHAL: Would you mark these as one exhibit.

(Defendants' Exhibit X was marked for

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identification.)

Q Now are you familiar with the name Delmar Trucking Company?

A Yes, sir.

Q Was that a company that supplied trucks to Paterno?

A Yes.

Q I show you four invoices of Delmar Trucking for dates May 31, June 27, July 20 and August 16, and ask you to look at them.

MR. SILVERMAN: Of what year, Mr. Rosenthal?

MR. ROSENTHAL: Of 1968.

Q Now do you recognize those as records kept in the regular course of business at Paterno & Sons?

A Yes.

Q And was it the regular course of business --

THE COURT: I don't understand it. These are other people's invoices?

MR.ROSENTHAL: Yes.

THE COURT: Which are records kept in the regular course --

MR. ROSENTHAL: By us when we pay the bills.

THE COURT: How can you recognize those as coming from the records of Paterno & Sons, Inc.?

THE WITNESS: Because it has my handwriting on them.

THE COURT: Okay.

Q And it has a stamp on it also showing the date it was received, doesn't it?

A Yes.

Q And among other things it has a notation as to the date when checks were issued, does it not?

A Yes.

Q And the number of the check?

A Yes.

MR. ROSENTHAL: I may have misstated it, Judge. I said May 31st and I see that it is really July 31st, but I assure the Court that it was not intentional.

Q Now looking at the invoice for June 27, 1968, what date was that received by Paterno & Sons, Inc.?

A June 28, 1968.

Q And what was involved there, trucking?

A Yes.

Q And when was it paid by Paterno & Sons?

A August 13, 1968.

Q So that is approximately six weeks after you received the statement?

A Yes.

Q Look at the invoice dated July 31, 1968. When was that received by Paterno & Sons?

A August 2nd.

Q When was that paid?

A These were a lumpsum that was paid all together.

Q When was that paid?

A August 26th.

Q Approximately four weeks afterwards?

A Right.

MR. SILVERMAN: Excuse me, what was the date on the invoice?

MR. ROSENTHAL: The date on the invoice was July 31st. It was received by Paterno on August 2nd.

Q And it was paid with one check covering two invoices on August 26th, is that correct?

A Yes.

Q I call your attention to the invoice dated June 27, 1968. Is there a notation on that invoice?

A Yes.

Q And what is that notation?

A It says "Truck used by Plaza Asphalt," and okayed for payment by George Denti.

Q And does that mean anything to you, the fact that that notation was on that?

A I assumed that the bill was okay to pay.

Q But the fact that he made a notation that the truck was used by Plaza Asphalt, would that indicate to you that there was no backup slip for that truck?

A Right.

Q Yet the bill was paid, wasn't it?

A Yes.

Q It was paid on August 13th of 1968, right?

A Yes.

Q Approximately seven weeks after the date of the bill?

A Yes.

Q Look through these four bills and see if any of them were paid within two weeks after the date of the invoice.

A No.

MR. ROSENTHAL: I offer this in evidence as X-1.

(Defendants' Exhibit X-1 was received in evidence.)

BY MR. ROSENTHAL:

Q Now, Mrs. Altro, I show you an invoice of Lanza Bros., Inc., to Paterno Construction, 2507 Rowe Street, and I ask you the date of the invoice, the top invoice (handing).

A August 20, 1968.

Q And when was it received by Paterno?

A August 22nd.

Q And the second invoice which is attached thereto?

A August 30th, September 9th.

Q And the third one that is attached?

A September 15th; September 17th.

Q When were those invoices paid?

A November.

Q What date in November?

A 12th, 1968.

Q And by what check number?

A 1026.

Q Is that the check attached thereto?

A Yes.

Q In other words, the August 20th bill was paid --

A November.

Q Over ten weeks after the date of the bill, is that right?

A Yes.

Q And this was for trucking, was it not?

A Yes.

Q I call your attention to the fact that there are corrections made on this invoice -- at least the top one, as to the rate, and in some instances -- as to the rate; is that correct?

A Yes.

Q And who made those corrections and notations, do you know?

A No.

Q Does it look like George Denti's figures to you?

A It looks like his handwriting, yes.

Q Right. When I say his "figures" I mean his handwriting.

A Yes.

Q And was it customary for Mr. Denti or other people in the firm, including yourself as a bookkeeper, to check the invoices?

A Yes.

MR. ROSENTHAL: I offer the invoices of Lanza Bros. and the check attached as one exhibit -- as Exhibit X-2 (handing).

MR. SILVERMAN: No objection.

(Defendants' Exhibit X-2 was marked in evidence.)

BY MR. SILVERMAN:

Q I show you another invoice of Lanza Bros. -- another se of invoices of Lanza Bros. dated July 31, 1968. They were received by Paterno & Sons when (handing)?

A August 7, 1968.

Q And when were they paid by check?

A 9-16-68.

Q And is that the check that is attached thereto?

A Yes.

Q So that it was paid approximately six to seven weeks after the date of the receipt of the invoice?

A Yes.

Q Was that for trucking?

A Yes.

Q I show you an invoice of Lanza Bros. dated -- two invoices, one dated October 15th, 1968 and one dated October 31, 1968 (handing).

When were they received by Paterno & Sons?

A November 5th and October 25th.

Q And when were they paid?

A January of the following year.

Q January of 1969?

A Of 1969.

Q What date in January?

A 10th.

Q And were there any corrections made on these invoices as to rate of pay?

A Yes.

Q Or rate of rental or the like?

A Yes.

Q Do they appear to have been made by George Denti?

A Yes.

MR. ROSENTHAL: I offer the invoice dated July 31st as Defendants' Exhibit X-3 and the invoices dated October 15th and October 31st, together with a check, as Defendants' Exhibit X-4 (handing).

MR. SILVERMAN: No objection, your Honor.

(Defendants' Exhibits X-3 and X-4 were now marked in evidence.)

BY MR. ROSENTHAL:

Q Now, Mrs. Altro, I show you invoices from Louis Testani Trucking Co. and ask you what date they

were received by Paterno & Sons (handing).

A August 5th, 1968 and August 22, 1968.

Q And when were they paid?

A 10-30-68.

Q Approximately ten to eleven weeks after the receipt of them.

A Yes, sir.

Q Do you know whether Louis Testani is a big trucking company or an individual?

A I don't know.

Q You have no idea?

A No.

MR. ROSENTHAL: I offer them in evidence as Exhibit X-5, I believe -- one exhibit.

MR. SILVERMAN: One exhibit? No objection.

(Defendants' Exhibit X-5 was received in evidence.)

MR. SILVERMAN: Your Honor, in order to save the Court's time, if these are checks and invoices which were submitted for payment by the truckers, the government has no objection to their admission in evidence. The dates on them speak for themselves. I only read from two of the 48 exhibits, so if counsel for brevity would do the same, whatever is most profitable to the situation.

THE COURT: Is that agreeable, Mr. Rosenthal?

MR. ROSENTHAL: May I confer with my brother at the bar?

(Mr. Rosenthal confers with Mr. Brill off the record.)

MR. ROSENTHAL: In view of Mr. Silverman's offer I will take advantage of it, and they are all offered, the vouchers and invoices and checks -- cancelled checks (handing).

MR. SILVERMAN: The only reservation I have, your Honor, is for the government to have an opportunity after the Court date to check them as to whether they were entered in the purchase book. Other than that the government has no objection to their admission in evidence.

MR. ROSENTHAL: Most of them indicate that they were entered in the purchase book, and they have page numbers on them.

THE COURT: Why don't you mark them all for identification and we will put them in evidence on Wednesday morning -- okay?

MR. ROSENTHAL: Yes.

THE COURT: You can mark them at that time, too.

MR. ROSENTHAL: Then let me put a paper clip on them to keep them separate.

BY MR. ROSENTHAL

Q Mrs. Altro, you have seen these invoices that I have shown you, and you have seen the dates they were received by Paterno & Sons; and you have seen the dates that they were paid by Paterno & Sons; is that right?

A Yes.

Q Now having seen all that, does that refresh your recollection as to when Paterno & Sons paid its truckers?

A Yes.

Q And having had your recollection refreshed what would you say was the normal length of time it might take for a trucker to be paid?

A Well, as I heard, then I remember that when we got the money for the job then we would pay whoever worked on that job.

MR. SILVERMAN: Objection, your Honor. I ask that that answer be stricken. She testified that she did not know what the procedures were for the payment of these expenses.

THE COURT: Let me understand; who made that determination, Mrs. Altro?

THE WITNESS: I did but --

THE COURT: No; who made the decision as to that rule that you did not pay until you got paid for the job?

THE WITNESS: That was the office rule.

THE COURT: Who told you that?

THE WITNESS: My sister.

THE COURT: Your sister?

THE WITNESS: Yes.

THE COURT: And no other person?

THE WITNESS: No.

THE COURT: Then how did youknow when you had gotten paid for the job?

THE WITNESS: We would get a check, yes.

THE COURT: And you yourself determined that?

THE WITNESS: We got the check, yes, I received that.

THE COURT: So was it you who decided when a trucker would get paid?

THE WITNESS: No.

THE COURT: Who decided that?

THE WITNESS: I assumed that it was George.

THE COURT: Well, do you know?

THE WITNESS: No, not positively.

THE COURT: You did not know?

THE WITNESS: No.

THE COURT: So you did not know who decided when the trucker got paid?

THE WITNESS: No.

BY MR. ROSENTHAL:

Q Mrs. Altro, is it not true that there were many times when the bank balance of Paterno & Sons would not permit the paying of bills to any great extent?

MR.SILVERMAN: I object, your Honor.

THE COURT: On what ground?

MR. SILVERMAN: The bank statements or bank balance is not the one who objects to the payment of bills.

THE COURT: No, he says was it frequently the case that Paterno & Sons did not have enough money in the bank to pay its bills.

THE WITNESS: It wasn't very frequent.

THE COURT: Sometimes.

THE WITNESS: Yes.

MR. SILVERMAN: She is not competent to testify because there were three bank officers who testified that Paterno & Sons had a credit line. Unless she knows the function of that credit line and when the balance is overdrawn, and when they were allowed to write checks against that credit line, she would not be competent to testify to that.

THE COURT: I don't remember whether there was

or was not.

MR. BRILL: I don't either, your Honor.

MR. SILVERMAN: I believe that one of the bank officers testified -- I believe Mr. Andretta.

THE COURT: You can bring him back on further examination.

(To the witness) Is it your testimony that you personally knew that the bank balance was down, that Paterno couldn't pay his bills? Did you personally know that?

THE WITNESS: Yes.

THE COURT: That is her testimony.

MR. ROSENTHAL: I have no further questions.

THE COURT: Any redirect.

MR. SILVERMAN: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. SILVERMAN:

Q Mrs. Altro, just to be certain that we get our terminology correct, there are three different types of items you are talking about -- invoices, delivery tickets and cost sheets. Is it true that they are three different types of documents?

A Yes.

Q Is it true also that the delivery tickets are

the documentation for whether or not a trucker worked out in the field?

A Right.

Q And as the delivery tickets came through, they are put with the cost sheets, is that correct?

A Yes.

Q And after you are ready to prepare a check and after the invoices come in, you remove the delivery tickets from these cost sheets and staple them to the invoices; is that correct?

A Yes.

Q You then prepare a check based on that invoice and those delivery tickets.

A Yes.

Q And is it true that on every occasion you gave a check to Mr. Paterno for his signature as for trucking expenses, there were delivery tickets stapled to the invoice?

A Yes.

Q And is it also true that it was stapled somewhere on the top, but mostly in the left-hand corner?

A Yes.

Q I show you a few of these exhibits, Mrs. Altro. Will you go through all these invoices and would you tell

me, please, whether each and every one of those invoices has a staple mark in the top or upper left-hand corner of those invoices?

MR. ROSENTHAL: May I submit that they speak for themselves, your Honor?

THE WITNESS: Yes. We don't have to have her do that.

MR. SILVERMAN: I would like to bring out one point on redirect.

THE COURT: Bring out some other point. We don't have to have Mrs. Altro look at every statement for that.

MR. SILVERMAN: Your Honor, may I have a side bar on this, please?

THE COURT: No; let us finish with this redirect.

BY MR. SILVERMAN:

Q Mrs. Altro, I show you Government's Exhibit 27-A, a bill or invoice from Anthony Ferrotta, dated January 1969, and I ask you --

MR. BRILL: Isn't that what your Honor just said should not be done with her?

THE COURT: Are you going to ask her about a staple mark?

MR. SILVERMAN: I did not ask her anything about

a staple mark.

THE COURT: Mr. Brill is jumping the gun.

MR. ROSENTHAL: It is not a proper redirect.

THE COURT: I do not know what the question is yet. Ask the question.

Q Mrs. Altro, when you were shown that invoice for the first time, youwere with Special Agent Ayres and Agent Rizzo?

A Yes.

Q And that was shown to you in your home?

A Yes.

Q On examining that invoice were you asked whether or not you prepared the check in payment of that invoice?

MR. ROSENTHAL: Now I submit, if the Court please, No. 1, this is not proper redirect. I did not, and I do not recall Mr. Brill going into any of these invoices.

And, No. 2, the question that is being asked at this time as to what she told Mr. Ayres is not admissible, not proper.

THE COURT: I will sustain No. 2.

MR. SILVERMAN: Your Honor, I would like to question the witness on the preparation of checks.

THE COURT: Ask her the fact now if she knows, but I do not want you to ask her what she told Mr. Ayres

in her house.

Q Will you look at the corresponding check, Government's Exhibit 27, and I ask you if you prepared that check (handing).

A (After examining) Yes, Idid.

Q Did you prepare that check?

A Yes.

Q And is there any writing on that invoice in your handwriting?

A (After examining) Just the purchase journal entry.

Q Did you present that check to Michael Paterno for his signature?

A Yes.

MR. SILVERMAN: I haveno further questions, your Honor.

THE COURT: Anything else, Mr. Brill or Mr. Rosenthal?

MR. ROSENTHAL: I have nothing further, your Honor.

THE COURT: All right, Mrs. Altro.

RECROSS EXAMINATION

BY MR. BRILL:

Q Mrs. Altro, just one or two questions --

THE COURT: Oh, I am sorry.

Q -- you have just been asked about the method by which you put together the invoice, the backup and the check. Mr. Silverman asked if on every single occasion you stapled, as he put it, all of this material -- the invoice, the backup material, and handed it to whoever was signing it, with the check.

Did you sometimes use clips?

A I said I did, yes.

MR. BRILL: Thank you.

THE COURT: Is that all?

MR. SILVERMAN: Yes, your Honor.

THE COURT: All right, Mrs.Altro.

(Witness excused.)

MR. SILVERMAN: Mr. Johnson.

THE COURT: Since we are going to have a holiday tomorrow we can work until 5 o'clock.

MR. BRILL: Your Honor, there is a lawyer in the courtroom who would like to leave his records that have been subpoenaed by Mr. Silverman and myself. I have no objection to his being taken out of turn or taking the records and leaving the responsibility for maintaining them.

MR. SILVERMAN: I do not know what records

Mr. Brill is referring to.

MR. BRILL: Mr.Simon, I think you subpoenaed him.

MR. SILVERMAN: I did not subpoena him.

THE COURT: I am sorry, he will have to wait until 5 o'clock.

L E E A. J O H N S O N, called as a witness on behalf of the government, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SILVERMAN:

Q Mr. Johnson, by whom are you employed?

A I am employed by the Department of Taxation & Finance of New York State.

Q How long have you been employed by that Department?

A 3-1/2 years.

Q What is your position with the New York State Taxation Department?

A I am a file clerk and responsible for the filing, security and research of individual tax returns.

Q Mr. Johnson, did you cause a search to be made as to whether or not an individual by the name of Michael Catenzaro, Anthony Ferrotta, Arthur Lazravitch and Thomas Tuccella had filed individual tax returns with the State of New York?

A I did.

Q I would like to show you Government's Exhibit 190 and ask you what it is -- what type of document it is (handing).

A (After examining) This is a certification from the Director of the Income Tax Bureau and the Deputy Tax Commissioner of the State of New York, under the seal of the State of New York, stating that neither Michael Catenzaro, Anthony Ferrotta, Arthur Lazravitch nor Thomas Tuccella filed a New York State tax return -- they failed to file these returns for the years 1965, 1966, 1967, 1968, 1969, nor '70.

Q Mr. Johnson, does that refer to a particular taxpayer at a particular address or does it refer to the name of that taxpayer at any address in New York State?

A It refers to the name of that taxpayer at any address in New York State.

Q Did you also cause a search to be made to determine whether or not a John Aurrichio had filed an income tax return, an individual one with the State of New York?

A Yes, we did.

Q I show you Government's Exhibit 191 and I ask you if you recognize that exhibit, sir (handing).

A (After examining) This is an additional certification from Mr. John F. Donovan, Director of Income Tax and Deputy Tax Commissioner of the State of New York, stating that income tax returns for John and Katherine Aurrichio, 26 Buckingham Drive, Dix Hills, New York, filed tax returns for the years '65 through '69, and these returns have been destroyed under the provision of Section 697, Subdivision E of Article 22 of the Personal Income Tax Law of New York State.

Q Mr. Johnson --

A I also have --

Q I am sorry.

A -- I also have attached hereto a photostatic copy of a 1970 individual income tax return for John and Katherin Aurrichio at the same address.

Q Was a search made to determine whether or not there was any return filed -- individual return for any other John Aurrichio in New York State?

A There was, and that is the only one.

MR.SILVERMAN: I would like to offer Government's Exhibits 190 and 191 in evidence (handing).

(Counsel examine.)

(Government's Exhibits 190 and 191 were received in evidence.)

BY MR. SILVERMAN:

Q Mr. Johnson, did you also cause a search to be made to determine whether there was any incorporation -- any corporation that filed tax returns --

A We did.

Q -- in New York State under the names of John Aurrichio, Michael Catenzaro, Anthony Ferrotta, Arthur Lazravitch, Thomas Tuccella or Aurrichio and Tuccillo Contracting Corp. and Paterno & Sons, Inc.?

A We found returns for Aurrichio and Tuccillo and for Paterno & Sons, Inc.

For the other four mentioned people no corporation returns and we have submitted certificates to attest to that.

Q Mr. Johnson, I show you Exhibit 192 -- Government's Exhibit 192, and I ask you if you recognize that, sir (handing).

A I do.

Q And what is that, sir?

A The first certification is a request responded to by Mr. Boehm, Director of Corporation Tax to Mr. Walter Ayres, Special Agent, certifying that he received a request for the aforementioned corporation tax returns.

The second is a certification signed by Mr. Boehm

that we found corporation tax returns for a corporation named Aurrichio & Tuccillo Contracting Co., and that they had filed a franchise tax -- paid franchise taxes known to be due, pursuant to the provisions of Article 9-A of the Tax Law for the years ended September 30, 1968 and the year ended September 30, 1972; and the State Tax Commissioner further certifies that the said Aurrichio & Tuccillo owes the balance of the taxes for the year ended September 30, 1969 to September 30, 1971.

Q Mr. Johnson, referring to the next four documents, are they documents that relate to Catenzaro --

A Catenzaro, Ferrotta, Lazravitch and Tuccella.

Q And these are the certifications that those individuals had filed no corporation -- no corporations had filed in the State of New York during the years indicated thereon, is that correct?

A That is true, sir.

(Mr. Silverman hands to Mr. Rosenthal.)

MR. ROSENTHAL: Your Honor, I have no objection to the certification about Aurrichio and Tuccillo and Paterno & Sons, Inc., but I most certainly cannot concede how even our great State of New York can certify that they reveal no record of a corporation named Anthony Ferrotta -- and what that might mean or what

value it has to this case I don't know.

THE COURT: Is that your objection?

MR. ROSENTHAL: That is my objection -- that it has no probative value whatsoever as to searching -- allegedly searching under corporate titles, using individual names -- period.

THE COURT: Well, having adduced the evidence about an individual search I think the government is allowed the extra precaution to do this.

Objection overruled.

(Government Exhibit 192 was received in evidence.)

MR. SILVERMAN: No further questions.

THE COURT: Cross examination.

CROSS EXAMINATION

BY MR. ROSENTHAL:

Q Mr. Johnson -- is it?

A Yes, sir.

Q -- it is safe to assume that everybody within the State of New York who is required to file income tax returns doesn't.

THE COURT: Mr. Rosenthal, that is not a question of which he has any special competence. He is only a file clerk in charge of records, and the jury knows what

it knows. We an take judicial notice that not everybody files tax returns.

Go on to something that he is qualified to speak about.

BY MR. ROSENTHAL:

Q Mr. Johnson, I show you Government's Exhibit 190, which has been admitted in evidence, and that is a certification, is it not, sir --

A Yes, it is.

Q -- that they find no record of an individual tax return by Michael Catenzaro?

A May I see it, sir?

Q And the other names that appear there (handing).

A (After examining) This is a certification that they find no individual tax returns for the years 1965 to 1970 inclusive for Michael Catenzaro, Anthony Ferrotta, Arthur Lazravitch nor Thomas Tuccella.

Q Now, sir, I show you Government's Exhibit 192 and call your attention to this certificate.

A Yes, sir.

Q That one and the ones that follow.

(Witness examines.)

Q Am I correct, sir, that the certificate merely says that you find no record of a corporation by the name of the same individuals that you have just read off in respect to income tax, is that right?

A The three certifications state that they found no records in the Department of Taxation & Finance, reveal no record of a corporation named Michael Catenzaro, Anthony Ferrotta, nor Arthur Lazravitch, nor Thomas Tuccella organized under the laws of the State of New York.

Q And those are the same names that you read off under the other certificates, that they found no individual personal income tax returns for, is that correct, sir?

A Those are the same names.

Q No variation, nothing added to indicate a corporation or anything of that sort, is that right?

A I don't understand the question, sir.

MR. ROSENTHAL: All right, I will withdraw it. It is argumentative anyway.

Will your Honor give me half a minute?

THE COURT: Yes.

MR. ROSENTHAL: I have no other questions, your Honor.

MR.SILVERMAN: No redirect, your Honor.

THE COURT: All right, Mr. Johnson, you are

excused.

THE WITNESS: Your Honor, am I excused?

THE COURT: Yes.

(Witness excused.)

THE COURT: Do you have something you can accomplish in ten minutes, Mr. Silverman?

MR.SILVERMAN: Yes, your Honor.

THE COURT: While we are waiting, in order to be efficient, let me inform everybody, ladies and gentlemen of the jury and counsel and others again that tomorrow is a holiday, and that we are going to try to start promptly at 10 a.m. on Wednesday the 13th.

For your guidance and making of your personal plans, we are going to have to stop our work for the day on Wednesday about 3 o'clock.

So you can plan on that basis.

B E N E D I C T C I A V O L E L L A, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SILVERMAN:

Q Mr. Ciavolella, please keep your voice up so that people in the back of the room will be able to hear you, sir.

A Yes.

Q What is your full name?

A Benedict Ciavolella.

Q What is your occupation, sir?

A Vice president of Local 282.

Q What type of union is Local 282?

A Well, they deal in construction, sand and gravel, plumbing, excavating.

Q The members that belong to Local 282, what type of work do they perform?

A They drive heavy equipment.

Q What is the geographic area of Local 282? What area of the New York area does it cover?

A The five boroughs, including Nassau and Suffolk Counties.

Q Now during the period of 1963 to 1972 did your

union have any existing contracts with any employers or contractors?

A We had plenty.

Q What periods of time did these contracts cover? How long was each contract?

A Oh, since I have been in the organization, three years.

Q Was there a contract in effect from 1963 to 1966?

A That is correct.

Q And one from 1969 to 1972?

A Yes, sir.

Q And one --

A April 1972 to 1975.

Q And there is one from 1966 to 1969 also?

A Yes, sir.

Q Now prior to 1963 who was required to pay the union dues of the members that belonged to your local?

A I don't follow that question, sir.

Q Prior to 1963, before 1963 did the union members pay their dues to the local?

A Yes, sir.

Q Now after 1963 who was responsible for payment of the union dues of these members?

A The member himself.

Q Before 1963 who paid the pension and welfare benefits of the members that belonged to the union?

A The employer.

Q And is that the present case now also, sir?

A Yes.

Q Does the union maintain records of the dues paid by its union members?

A The dues, yes, sir.

Q Where are these records kept, sir?

A 265 West 14th Street, New York.

Q Let me show you Government's Exhibits 116 and 117 for identification and ask you if you recognize the type of records they are, sir?

A They are our ledger cards.

Q What type of ledger cards are they, sir?

A Dues ledger cards.

Q Were the entries on these documents, sir, made in the regular course of business by the local?

A That is correct.

Q Was it the regular course of business of the union to make entries on this type of ledger cards when the moneys were received?

A That is correct.

Q Mr. Ciavolella, prior to coming down here

today did you cause a search to be made of the records of your local to determine whether certain named individuals were union members?

A I don't follow that question.

Q Did you examine the files and the records maintained by Local 282 to determine whether certain names that I had given you were members of your local?

A Yes.

Q And did you make a search for the name of Arthur Lazravitch?

A Yes, sir, I did.

Q Did you make a search for the name Thomas Tuccella?

A Yes.

Q Did you make a search for the name Michael Catenzaro?

A Yes, sir.

Q Didyou make a search for the name Anthony Ferrotta?

A Would that be Anthony Ferrotta or Perrotta?

Q Ferrotta, F-e-r-r-o-t-t-a.

A That is correct.

Q Do you have any records of those individuals being members of your local?

A Of the five you just mentioned?

Q The four, sir.

A According to our records we only have two of them.

Q What two did you find, sir?

A John Aurrichio and Anthony Ferrotta.

Q In reference to Government's Exhibit 116, what is the name of the union member that is on that card?

A John Aurrichio.

Q What is his address as listed on this card?

A 59-05 Fresh Meadow Lane, Flushing, Long Island.

Q Does the ledger card include any payments received from that union member?

A Yes, sir, January 3, 1956, $123.

Q Have there been any payments received by tne local since that date, sir?

A No, sir.

Q I show you Government's Exhibit 117 and ask you what is the name of the union member on that card.

A Anthony F-e-r-r-o-t-t-a.

Q F-e-r-r-e-t-t-o, is that correct?

A Well, I have here F-e-r-r-o-t-t-o. It might be something wrong with the e or the a.

Q What is the name on the ledger card?

A F-e-r-r-e-t-t-o.

Q What is his address?

A 1357 Putnam Avenue, Brooklyn, New York.

Q What is the name of the employer of Mr. Aurrichio?

A He is an owner, an owner driver.

Q And who is the employer of Mr. Ferrotta?

A At the time of this record it was Mineola Lumber.

Q And by looking at Government's Exhibit 117, were there any payments received either from Mr. Ferrotta or on his behalf?

A Not since the year 1955.

MR. SILVERMAN: I would like to offer Government's Exhibits 116 and 117 into evidence.

Q Mr. Ciavolella, did you also make a search through the union records to determine whether or not those five individuals had contracts with the union as employers?

A I did.

Q What was the result of your search, sir?

A No such thing.

Q Did you also examine the records of Paterno & Sons, Inc. to determine whether or not there were any contracts with the union by the name of Paterno & Sons, Inc.?

A Yes, I did.

Q I show you Government's Exhibits 118, 119 and 120 and ask you if you recognize them, sir?

A I do.

Q What are they, sir?

A They are an excavating contract.

Q Between what firm and your union?

A Paterno & Sons, Inc.

Q And whose name appears, sir, as the officer of Paterno & Sons, Inc.?

A It is pretty hard to make out.

Q Okay, if you can't read it.

How about this one? Can you read this signature?

A Denti on that one.

MR. BRILL: What was that, please, the number?

MR. SILVERMAN: Denti on that one.

MR. BRILL: The number?

MR. SILVERMAN: That was 119. The first one was 118.

THE WITNESS: On this one it is Denti too.

Q What is his title with the firm?

A Secretary-treasurer.

MR.SILVERMAN: The government offers 118, 119 and 120 in evidence. They are contracts. 118 is 1963 to 1966; 119 is 1966 to 1969 and 120 is 1969 to 1972.

Q Mr. Ciavolella, do you know what a shop steward is, sir?

A I do.

Q What are the responsibilities of the shop stewards that work for your union?

A His responsibilities are to check the men on the job.

MR. BRILL: I am going to object to this, if your Honor please. This shop steward issue does not arise with respect to Local 282.

THE COURT: Does it, or will it, Mr. Silverman?

MR. SILVERMAN: Your Honor, there has been testimony as to the other truckers as to what happened at the job sites. Local 282 was one of the unions mentioned as one of the unions covering that area.

THE COURT: Covering which area?

MR. SILVERMAN: The area of the five boroughs where some of the job sites were.

THE COURT: Has anybody testified or will anybody testify to the presence or activities of shop stewards in the five boroughs?

MR. SILVERMAN: There has been testimony, your Honor.

MR. ROSENTHAL: Only as to Carmel.

MR. BRILL: That is true.

THE COURT: I have a question pending of Mr. Silverman.

MR. SILVERMAN: I am not positive, your Honor, as to Mr. Cimino's testimony.

THE COURT: Well, I don't recall. You may elicit if this witness knows, if Mr. Ciavolella knows whether the practice of his local is the same or different from the practice of the other locals.

MR. SILVERMAN: May I ask him of his own personal knowledge, your Honor?

THE COURT: Yes, if he has any.

BY MR. SILVERMAN:

Q How long have you been with this union?

A I didn't hear you.

Q How long have you been working for the union?

A 18 years.

Q In the course of your employment with the union have you everbeen a shop steward?

A Yes, sir.

Q As a shop steward what were your responsibilities as a shop steward?

A Well, in my time --

MR. BRILL: Excuse me.

THE COURT: No, that is not what I said you can ask him.

As a matter of fact, I think we ought to leave

this subject. I don't think there is an adequate foundation.

You don't plan to connect that by any additional testimony, do you?

MR. SILVERMAN: No, your Honor.

THE COURT: All right,let's leave it.

MR. SILVERMAN: I have no further questions.

THE COURT: All right, the offer of those exhibits is pending.

Is there any objection?

MR. BRILL: No, and for the convenience of the Court and jury I will acknowledge that the signature on 118 is that of Mr. Paterno.

MR. ROSENTHAL: And on 119 and 120 it is that of the defendant George Denti.

THE COURT: Then 116 through 120 are received.

(Government's Exhibits 116 through 120 for identification were received in evidence.)

THE COURT: Is there cross examination?

MR. BRILL: Just a few questions, Judge.

CROSS EXAMINATION

BY MR. BRILL:

Q Mr. Ciavolella, did you find any other ledger cards for other persons whose name or names are Aurrichio?

A I have.

Q Do you have them here with you now?

A I have.

Q Have you been subpoenaed to produce them?

A I have.

Q How many such cards do you have?

A The surname is the same but not the first name. You want the Aurrichios?

Q Yes.

(Witness hands cards to Mr. Brill.)

MR. BRILL: Could we have this marked for identification at the moment, and if received may we substitute photostatic copies for them? I have been asked to ask your Honor to do that.

THE COURT: Yes, if and when they are received.

MR. BRILL: I think they should be marked separately, your Honor.

THE COURT: All right, why don't we mark them separately.

(Defendants' Exhibits Y, Z, AA and AB were marked for identification.)

Q Now, is it true that Exhibit Y deals with a member who lives in the Bronx?

A This is the address on this card as of 1952.

Whether it is the correct address now or not I don't know.

Q Would your answer be the same with respect to Exhibit 116?

A As of 1956 that was the address we had on this card

Q And with respect to Exhibit 117, is that the best address you had as of December 1955?

A That is correct.

Q Now,with respect to Exhibit Z, Mr. Ciavolella, under Aurrichio you have an address for him in Carmel, New York?

A That is correct, yes, sir, Carmel, New York.

Q And does that card show that that address is as late as March 25, 1965?

A 1965, yes, sir. 1965.

Q Now Exhibit AA, that is one of your cards, and that is an owner-driver, is it?

A The name of Domenick Aurrichio according to this card?

Q Yes.

A Yes. He is an owner-driver on the ledger card.

Q And the best address you have for him is as of 1948?

A Correct.

Q And Exhibit AB, that is a Brooklyn addr[illegible]s, and

the best address you have is March 1959, right?

A That is correct, 1466 Caton Avenue, Brooklyn.

Q Now, are these exhibits, Y, Z, AA and AB the same kind of cards and are they kept in the regular course of business of Local 282?

A Except this one here. These are the outdated ones.

Q Are they the same as 116 and 117?

A Yes, they are.

Q And Exhibit Y is, you say, an outdated one?

A It is an outdated one. We haven't come up with an updated one for that card there, but we still keep them cards.

Q But it is one of the cards regularly kept in the regular course of business of Local 282?

A Yes, sir.

MR. BRILL: I offer them in evidence, your Honor.

MR. SILVERMAN: No objection.

(Defendants' Exhibits Y, Z, AA and AB for identification received in evidence.)

Q Were you asked to find cards with the surname Lazravitch?

A That is correct.

Q And did you produce here today five cards bearing the surname of Lazravitch?

A Yes, sir.

Q And are these the five cards?

A They are.

I might tell you that this gentleman here is deceased, if you want that (indicating).

Q Since 1968?

A That is correct, sir.

Q Referring to Pete Lazravitch of Rosedale, New York?

A Yes.

MR. BRILL: May we have these marked for identification.

(Defendants' Exhibits AC, AD, AE, AF and AG were marked for identification.)

Q Now, these show the last, the best address you have? For example -- this one doesn't -- this man Gerald Lazravitch, that is a Rosedale address as late as November 1969?

A That is correct.

Q And that is Exhibit AE.

And Exhibit AD is Pete Lazravitch, and the best address is as late as March 13, 1958, right?

A That is correct.

Q And AF is George Lazravitch, and the last address is August 28, 1970.

He lives in Rosedale?

A That is correct.

Q And you have already told us about Pete Lazravitch. He is the one who is deceased, Exhibit AC, right?

A That is correct. He lived in Rosedale too at the time.

Q And this one, Exhibit AG for Steve Lazravitch in Springfield Gardens, in New York, and the last address you have is apparently 1952, is that right, Mr. Ciavolella?

A That is correct.

Q And these likewise are kept in the regular course of business by Local 282?

A That is correct.

Q And is it the regular course of business to keep them?

A That is correct.

MR. BRILL: I offer them in evidence.

MR. SILVERMAN: No objection.

(Defendants' Exhibits AC, AD, AE, AF and AG for identification were received in evidence.)

MR. BRILL: I will defer to Mr. Rosenthal.

MR. ROSENTHAL: I have two questions, I believe.

CROSS EXAMINATION

BY MR. ROSENTHAL:

Q Mr. Ciavolella, am I correct in understanding that any person who went to work for a contractor who had entered into a labor agreement with Local 282, that person would have 30 days within which to join the union?

A That is correct.

Q In other words, he does not have to have that union card in his hand the first day he comes on the job for that employer, is that correct?

A No, sir.

Q Also, sir, if a man from your local who is working for a company that was doing work up in Westchester above the Bronx line, would your cardholder be permitted to work up there?

A Yes, sir.

MR. ROSENTHAL: I have no other questions.

MR.SILVERMAN: A very short redirect, your Honor.

REDIRECT EXAMINATION

BY MR. SILVERMAN:

Q Mr. Ciavolella, in reference to the name that

you were asked to check, how do you spell the name Lazravitch?

A The first name I was asked, his name is Arthur, and the last name is L-a-z-r-a-v-i-t-c-h.

Q Are any of these names spelled that way, sir, or are they all spelled L-a-z-r-o?

A That is correct.

Q Now, with reference to the Aurrichios you were asked to check, could you spell the name Aurrichio you were asked to check?

A A-u-r-r-i-c-h-i-o.

Q Now with reference to the two Aurrichios, Defendants' Exhibits Y and AB, how many r's are in Aurrichio on those exhibits?

A One.

Q And are any of the first names of these four Aurrichios John?

THE COURT: It is in evidence.

A No.

MR. SILVERMAN: I have no further quetions, your Honor.

THE COURT: Anything else?

MR. BRILL: Just one question.

RECROSS EXAMINATION

BY MR. BRILL:

Q Mr. Ciavolella, is it true that sometimes the stenographers or whoever it is who puts these names on these cards --

THE COURT: I don't know why you gentlemen keep asking questions like that.

You mean they make mistakes?

MR. BRILL: Yes.

THE COURT: The answer is yes.

Isn't the answer yes?

THE WITNESS: Yes, sir.

THE COURT: And the jury knew it, and, really, I don't think you ought to bother witnesses with that kind of questions.

You are excused.

(Witness excused.)

THE COURT: The jury is excused too.

Let's come back at 10 a.m. on Wednesday, and have a good holiday.

Don't discuss the case among yourselves or with anybody else.

(Jurors left the courtroom.)

MR. SILVERMAN: Would there be a possibility

of us giving the copies in evidence to the attorney for the union and have him make copies to us and return the copies to us?

Would there be any objection?

THE COURT: No.

Gentlemen, I don't want any more questions asked witnesses about common experience. If you have any questions like that, just ask me to take judicial notice. Do people sometimes break the law? Yes, I will tell you that.

Sometimes makes mistakes?

Yes.

Let's not do that again.

Wednesday morning at 10, gentlemen.

(Adjourned to Wednesday, February 13, 1974, at 10:00 a.m.)

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United States of America

vs

Michael Paterno, et al.

New York, New York
February 13, 1974 - 10:20 a.m.

(Trial resumed.)

THE COURT: Gentlemen, we have had the same juror late for the last two or three days. I am going to issue an order that people be on time subject to penalties. Any objection to that?

MR. SILVERMAN: No your Honor.

THE COURT: All of you have been on time and I don't think we ought to be kept waiting 15 or 20 minutes all the time.

MR. BRILL: Mr. Silverman and I have reached an agreement with respect to that mass of records and we have agreed on the reception in evidence of the purchase journals for the fiscal year beginning 1965 ending '66 as AH, the following year beginning March '66-67, AI, the next year AJ, the fourth year AK, and the fifth year AL with the stipulation that these were all examined by Mr. Rizzo in the course of his examination of the records at Paterno & Sons, Inc.

MR. SILVERMAN: That is true, your Honor.

THE COURT: You want them marked received now?

MR. BRILL: We have had them premarked under that arrangement and we ask your Honor's permission to have them so marked and made a part of the record so that they can be referred to and the jury so advised.

MR. ROSENTHAL: Your Honor will recall that on Monday when Mrs. Altro was on the stand, I offered certain bills in evidence, some of which were accepted and then your Honor said as to the others that I should wait until Wednesday morning until Mr. Silverman had a chance to look at them, the invoices and the checks with them.

He has had that opportunity and he has advised me that he has no objection to there going into evidence.

Now whether or not it should be done at this time or it should be done in the presence of the jury -- frankly, I would prefer that it be done in the presence of the jury.

MR. SILVERMAN: It doesn't matter to the Government either way, your Honor.

THE COURT: Okay.

MR. SILVERMAN: One other matter, your Honor. Yesterday when Mr. Rizzo and Mr. Ayres went over to examine the invoices and accompanying purchase journals I had them make a request at that time to see certain books and records which had been subpoenaed to be produced in court

on the first day of trial. Mr. Brill said that he had the records and at yesterday's request when I requested them to be able to see those records he denied them access to those records and stated that he wanted to make some sort of application to your Honor at this time.

MR. BRILL: I wasn't there, Judge, but what happened was I was informed --

THE COURT: You weren't there?

MR. BRILL: No, sir.

THE COURT: I thought you said Mr. Brill.

MR. SILVERMAN: I was in contact with Mr. Ehrlich who was relating Mr. Brill's message.

MR. BRILL: I was about to tell you, your Honor. Mr. Ehrlich was there. He told me in the course of a telephone conversation about his conversation with Mr. Silverman who had asked that those records which had been the subject of prior discussion among us be made available to the agents at that time.

My recollection of it was and I think the record supports me that when we first discussed that with your Honor, I advised your Honor that we had in the vicinity of the courtroom, and I am now referring to page 6 of the transcript, February 6th, and as they become required they will of course be produced.

Now, this is a judicial subpoena for the trial of the case. It is not a subpoena for the purpose of authorizing an untrammeled search or a fishing expedition. Those records are still available. We do have them. We don't have them actually physically in the courthouse but we can get them in a matter of 10, 15 minutes, and as your Honor directs they will be produced.

THE COURT: I so direct. Produce them now. You know that -- these are corporate records, are they not?

MR. BRILL: They are corporate records but they run not for the period involved --

THE COURT: I didn't ask you that. They are corporate records?

MR. BRILL: Yes, sir.

THE COURT: I am not going to keep a jury of 16 sitting here while the Government in open court goes through piles of records, any more than I would have that done if the shoe were on the other foot. If there are unprivileged records that either side wants to look at in the course of this trial and possibly introduce parts of in evidence, I don't want that scrutiny to go on while the jury is here, and I want you to accommodate each other. Produce the records and let Government counsel see them.

Is there any other problem?

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MR. BRILL: Do we have a statement as to the purpose for them since they go beyond the period of the issues involved before your Honor?

MR. SILVERMAN: I don't think a statement at this time is necessary, your Honor, since they are not being offered in evidence and they are not even being offered for identification.

THE COURT: Why do you want to get them?

MR. SILVERMAN: The Government wants to look at those records,your Honor, to determine whether or not during the years subsequent to the 2/28/70, whether there were any checks payable to any of the five truckers that are the issue of this whole case.

THE COURT: All right, well, that's a legitimate purpose.

MR. BRILL: These records run into 1974.

Does your Honor want me to give them to him for 1974?

THE COURT: Is there any privilege claimed?

MR. BRILL: No.

THE COURT: Give them to him.

MR. BRILL: My objection goes to the point I made. There is no claim of privilege.

THE COURT: Well, the objection you made as nearly

as I understand it is overruled. Deliver the records and let the Government look at them for the evidentiary purpose Mr. Silverman has just stated.

MR. BRILL: They will be made available to Mr. Silverman's representatives or IRS agents at our offices beginning --

THE COURT: No, no, you pointed out it is a judicial subpoena.

MR. BRILL: It is.

THE COURT: Bring them here.

MR. BRILL: In the courtroom.

THE COURT: In the courtroom.

MR. BRILL: But they are not to be taken out of the courthouse, are they?

THE COURT: Well, the Government is always asking me to forbid defense counsel to take various things out of the courthouse like 3500 material for one. I always tell Government counsel that I refuse that request because I think lawyers ought to accommodate each other.

Now, do you know any reason why they shouldn't be taken out of this courtroom?

MR. BRILL: Some of those are currently used. For example, the records for the current fiscal year which ends the end of this month are actually in use.

THE COURT: You don't need the current fiscal year, do you?

MR. SILVERMAN: Your Honor, we would examine them today and for the current fiscal year we would return them today.

THE COURT: Okay. All right, try to examine them all. If there is anything you want to take out of the courthouse, let me know and I will rule on it.

MR. SILVERMAN: Well, your Honor, let me make that request now. I would like Mr. Rizzo to be able to see those records, examine them in my office which is across the street.

THE COURT: Any reason they can't take them across the street this afternoon? We are going to suspend at 3:15, assuming we get started before this?

MR. BRILL: No, in view of your Honor's ruling, I can't make any objection. Your Honor has made a direction and I will of course comply.

THE COURT: All right.

MR. BRILL: They will be delivered over there at 3:15, is that what I understand?

THE COURT: Why not here? Deliver them here, not at 3:15, as soon as possible.

MR. BRILL: Sure. Could we have ten minutes to

get them and we will go get them now. We have got them marked in the trunk of a car outside.

THE COURT: Do that at a recess or at lunchtime. We are not going to take any more time for that.

Anything else as preliminary matters?

MR. SILVERMAN: One other preliminary matter, your Honor. I intend to offer in evidence today a typewritten page numbered Government's Exhibit 162-C for identification. These are questions and answers that have been excerpted from the testimony of Mr. Denti before the Internal Revenue Service. I have spoken to Mr. Rosenthal and he stated to me that he will not require the reporting stenographers to appear and to testify to their authenticity. I just wanted to make the Court aware of that and I will be offering into evidence 162-C, your Honor, through the Government, not through a witness, because of that fact.

THE COURT: Okay.

MR. BRILL: And your Honor, Mr. Silverman has told me that he wants the record to be clear that this instrument, which will be received as 162-C, is not being offered with respect to Mr. Paterno, and he affirmatively states that it is not to be considered against Mr. Paterno.

MR. SILVERMAN: That is correct, your Honor.

THE COURT: All right, when you offer it, why

don't you make that statement.

THE COURT: Anything else with it, gentlemen?

MR. ROSENTHAL: It is my understanding if and when Mr. Silverman offers it, I in turn, if not at that immediate time may offer questions and answers that took place that concern the same subject matter that he will be offering questions and answers.

MR. SILVERMAN: Yes, your Honor, I will be marking a full transcript for identification and then Mr. Rosenthal can then excerpt from that any questions he wishes to offer.

THE COURT: Okay, let's have the jury in first.

am (Jury in the box.)

THE COURT: Good morning, ladies and gentlemen.

THE JURORS: Good morning.

THE COURT: I know that we have kept you waiting for some minutes beyond the time when you were all assembled, and I am sorry about that.

I think I should record that counsel and the parties and the witnesses have uniformly been in the courtroom punctually at the appointed time. Occasionally, frequently in lawsuits, legal questions arise or other problems arise that are not capable of being planned for in advance, and it becomes necessary, although regrettable, to keep the jury waiting. We try to minimize those waiting periods.

On the other hand, there is normally no substantial justification for one or two members of a jury who keep other members waiting.

When I request with as much courtesy as I can muster that you get here at a certain time I mean that as a request from one adult citizen to a group of others. It is also my duty, however, to report to you that when I issue that kind of request in my capacity as a United States District Judge, it is an order of the federal court.

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I want everybody here on time from now on. There are catastrophes or unexpected emergencies that happen to all of us, and I will be understanding if they occur. Nevertheless if someone is late I will want an explanation of why the person is late, and I will expect it to be a valid explanation or I will consider treating tardiness as a violation of an order of the court, and I will take whatever measures seem necessary or appropriate under the circumstances.

We are ready to proceed.

H Y M A N S P I T A L E W I T Z, called as a witness on behalf of the government, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SILVERMAN:

Q Mr. Spitalewitz, could I please request you, sir, to keep your voice up so that the people in the back will be able to hear you.

What is your full name, sir?

A Hyman Spitalewitz.

Q By whom are you employed?

A The State of New York, Department of Motor Vehicles.

Q How long have you been employed by the

Department of Motor Vehicles?

A Over 40 years.

Q Mr. Spitalewitz, in August of 1972 was the Department of Motor Vehicles of the State of New York requested to make a search of their records to determine whether or not five named individuals had operators' or chauffeurs' licenses with the State of New York?

A That's correct.

Q I show you Government's Exhibit 177 for identification and ask you if you recognize these two documents (handing).

A I do.

Q And what are the two yellow pieces of paper?

A It is a list of names requesting information for a period from 1965 to date.

Q And what is the white piece of paper that is attached?

A It is an answer to the request.

Q Who is it by?

A By the Director of Motor Vehicles.

Q With reference to the names that were checked, was there any operator or chauffeur's license during the period of 1969 through 1972 for individuals by the names of Arthur Lazravitch, Thomas Tuccella or Michael Catenzaro?

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A There were no records in our files.

Q Now in relation to the other two names that were requested, the John Aurrichio, was there any operator's or chauffeur's license listed to that individual, sir?

A We find a driver's license in the name of John Aurrichio of 25 Buckingham Lane, Dix Hills, New Jersey -- New York, rather, with the date of birth of 3-14-28.

Q I show you Government's Exhibit 176 and ask you what type of document that is, sir (handing).

A That's an application for a driver's license.

Q And is there any certification mark on that document?

A There is a certification by the certifying clerk, Betty Ray dated 8-9-72.

Q What is the name of the operator of -- or the holder of that particular license?

A John Aurrichio, 25 Buckingham Avenue, Dix Hills, New York.

Q And as a result of your search was there any individual found by the name of Anthony Ferrotta -- F-e-r-r-o-t-t-a?

A Not in that name.

Q Was there any name that was close to that that

was found?

A We found a driver's license in the name of John -- Anthony G. Ferrotto.

Q Willyou spell it?

A F-e-r-r-o-t-t-o.

Do you want the address?

Q Yes.

A 4022 Case Street, Elmhurst, with a date of birth of 9-18-46.

Q I show you Government's Exhibit 175 and ask you if you recognize what type of document that is (handing).

A That is an operator's renewal license expiring 3-31-75, and I believe it was issued in March of 1972. We usually issue licenses for a period of three years.

Q And what is thename of the holder of that license?

A Anthony G. Ferrotto.

Q And is that a certified copy?

A Yes, sir.

Q And who is it certified by?

A By Betty Ray on 8-9-72.

MR. SILVERMAN: The government would like to offer in evidence at this time, your Honor, Government's Exhibits 175, 176 and 177.

MR. BRILL: My objection only goes to the connection and relevancy.

THE COURT: It is overruled.

(Government's Exhibits 175, 176 and 177 were received in evidence.)

MR. SILVERMAN: No further questions, your Honor.

THE COURT: Cross examination.

CROSS EXAMINATION

BY MR. ROSENTHAL:

Q Mr. Spitalewitz, am I correct in assuming that under the laws of the State of New York if I own a motor vehicle, whether it be a truck, pleasure or anything else, there is no requirement that I personally have an operator's or chauffeur's license?

A That's correct.

Q And am I also correct in understanding that under the laws of the State of New York if I have a license in another state and that I do not personally drive within the State of New York for a period of -- a continuous 30-day period, that it is not necessary for me to have a license as an operator or a chauffeur in the State of New York?

A If you have a license in another state, the presumption is that you are a resident of that state.

Q Right.

A And you can operate in the State of New York if you are a non-resident for a period of 30 days, provided it is not for commercial reasons, and there is a time limit.

Q If I have --

A If what?

Q If I have such a license there would be no record in your bureau concerning it, would there?

A That is right, if you are a non-resident.

Q When you say a "non-resident, " you are talking about the place where a person lives, are you not?

A Yes, where he is a legal resident, where he resides.

Q You are not talking about the place where he conducts a business?

A That is right.

MR. ROSENTHAL: Thank you.

REDIRECT EXAMINATION

BY MR. SILVERMAN:

Q One question, Mr. Spitalewitz. In reference to commercial use in New York State what is the requirement as to whether or not that individual may or must or must not have a driver's license?

A To operate in the State of New York you would need a driver's license. It depends upon what type of truck. If it is over 18,000 pounds you need the chauffeur's license. If it is under 18,000 you can operate with an operator's license.

THE COURT: Anything else, gentlemen?

(No response.)

THE COURT: All right, Mr. Spitalewitz.

(Witness excused.)

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W I L L I A M S. O B E R G, called as a witness on behalf of the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SILVERMAN:

Q Mr. Oberg, may I please request you, sir, to keep your voice up so that the people in the back will be able to hear you, sir?

A Yes.

Q Mr. Oberg, by whom are you employed?

A I am a special agent of the Federal Bureau of Investigation.

Q And what is the nature of your work, Mr. Oberg?

A I am employed as a document examiner in the laboratory in Washington, D.C. and, as such, I conduct examinations of known and questioned handwriting, and printing, typwriting, and so forth, to determine the origin or authenticity of questioned documents.

Q Mr. Oberg, how long have you been a document examiner for the FBI?

A Since March of 1956, approximately 18 years.

Q And what is your education and background?

A I have a B.A. degree from Eastern Michigan University at Ypsilanti, Michigan, and an M.A. degree

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from the University of Michigan at Ann Arbor, Michigan.

Q What specific training have yu had, Mr. Oberg, in the preparation for your work as a document examiner?

A Well, in the FBI laboratory I have attended lectures and conferences concerning document examination. I completed a specialized course of training which involved working thousands of cases under the guidance and direction of experienced document examiners, and I read materials specifically selected for this course of training.

Q Are you regularly assigned on a fulltime basis to the examination of questioned documents?

A Yes, I am.

Q And have you ever previously testified in a trial as a handwriting expert?

A Yes, sir.

Q In approximately how many other trials have you testified, sir?

A Somewhere between 85 and 90 cases.

Q Mr. Oberg, I would like you to look at the folder on your left and ask you whether or not you have seen before Government's Exhibits 1 through 48.

A (Witness examines).

Q Mr. Oberg, in order to save the Court some time, were these the same checks I showed you yesterday?

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A Yes.

Q Are these the same checks that you had seen at your laboratory at the FBI?

A Yes.

Q I would like you to look at the exhibits on your right.

Were those the invoices that I showed you yesterday?

A Yes, sir.

Q And were those the same invoices that you had seen in the FBI laboratory?

A Yes.

Q Mr. Oberg, I would like to show you Government's Exhibits 146, 147, 148 and 149 and ask you if you have ever seen these documents before, sir?

A Yes, sir, I have.

Q And where did you see those documents before, sir?

A In the FBI laboratory.

Q Now, did you have an opportunity to examine them in your laboratory?

A Yes, sir.

Q What was the purpose, sir, of examining those particular documents?

A The purpose of examining these was to determine whether or not the writer of Government's Exhibits 146 through 149 had prepared any of the writing on Government's Exhibits No. 1 through 48.

Q As a result of your examination and comparison have you formed any conclusions as to the signatures or endorsements that appear on Government's Exhibits 1 through 48?

A Yes, sir --

MR. BRILL: I object to that question, your Honor, because it is vague - "signatures or endorsements." I think he should take each one separately.

THE COURT: The answer is you do have an opinion?

THE WITNESS: Yes.

MR. ROSENTHAL: Your Honor, may we be informed, since we are not privy to what has been shown to the witness up to now, what 146, 147, 148 and 149 are?

MR. SILVERMAN: They are in evidence, your Honor.

THE COURT: They are in evidence, Mr. Rosenthal. You are privy to that, but I would direct Mr. Silverman to remind you of what they are.

What are they?

MR. SILVERMAN: Government's Exhibits 146, 147 and

148 of the handwriting samples of George Denti dated 10/18/71.

Government's Exhibit 149 is a piece of paper bearing the names and addresses of three of the truckers' names in question, Thomas Tuccella, Michael Catenzaro, Anthony Ferrotta that was received in evidence through the revenue agent Rizzo, and the date on that piece of paper is 4/30/71.

THE COURT: And was there any testimony as to whose handwriting it purports to be?

MR. SILVERMAN: No, your Honor. This was just a paper that Agent Rizzo had received from Mr. Denti on that occasion.

MR. ROSENTHAL: May we have a conference at the side bar in respect to this?

THE COURT: Yes.

(At the side bar.)

MR. ROSENTHAL: Mr. Brill informs me, and, frankly, I do not know, because I came into this matter quite late, that the last exhibit, 149, was not furnished to us as having been furnished to the expert as an exemplar of George Denti's writing, or any indication given to us that that had been used by this expert in forming his opinion with respect to the questioned documents and

endorsements.

Is that correct?

MR. BRILL: And no reference to that portion of the expert's report which was furnished to us.

MR.SILVERMAN: I had sent Mr. Brill copies of all the documents that had George Denti's signature on them, because he was representing Mr. Denti at that time, and all statements made by Mr. Denti. If Mr. Brill is claiming he wasn't given it, I have no knowledge of it. As far as my recollection serves, I made copies of it and gave it to Mr. Brill.

MR. BRILL: The first time we ever saw it --

THE COURT: I don't want it debated.

MR. BRILL: I don't want it debated either, but it is not under report.

THE COURT: If there is any problem of surprise or need for time for some expert or anybody else to look at Exhibit 149, I will certainly grant all reasonable requests of that nature, and I think the way this trial has been running such time can certainlybe found overnight, and so on .

What else is your problem?

MR. BRILL: I think your Honor has expressed it, but I do not see the need for 149 being involved in

this witness' testimony because his report which was furnished to us made no reference to 149, and there was no preparation in connection with it.

MR. SILVERMAN: That piece of evidence, 149, has been in evidence for over a week.

MR. ROSENTHAL: No question about that.

MR. SILVERMAN: And whatever basis he used to form his conclusion, your Honor, it is notrelated to what his testimony is going to be. If there any problem as to any inconsistencies in his testimony, the defense has ample time to call another handwriting expert to examine it, if that is what the question is.

MR. BRILL: Could I just take a minute to go back and get the report?

THE COURT: No, I don't want to see the report. If there any inconsistencies you may bring them out in Court.

MR. ROSENTHAL: But we have been furnished with a report that indicates that the witness in question, the witness on the stand, used certain standards for his comparison, and we were furnished with those standards, photocopies of them. Nowhere in his report or in the standards that were furnished to us is there any reference to 149.

THE COURT: I heard that.

Let me ask you something: Have you had an expert look at those?

MR. ROSENTHAL: Some I have, yes.

THE COURT: Which ones?

MR. BRILL: All but 149, I guess.

THE COURT: 146, 147 and 148?

MR. BRILL: I think so.

THE COURT: Well, do you know?

MR.ROSENTHAL: 146, 147 and 148 are George Denti's, yes.

THE COURT: Who is the expert?

MR.ROSENTHAL: Pearl Teitel.

THE COURT: Do you plan to call her as a witness?

MR.ROSENTHAL: No.

THE COURT: Pardon?

MR. ROSENTHAL: I do not.

THE COURT: Now, if you want Miss Teitel -- is it Miss Teitel?

MR. ROSENTHAL: Mrs.

THE COURT: If you want Mrs Teitel to look at 149, I repeat I will give you an opportunity to do that, and as to what you were or were not given in a written report, if there any claim of surprise we will takecare of that.

If there is any claim of inconsistency, you, as a seaoned counsel, will take care of that.

Now what else is the problem?

MR. BRILL: Could I make another point, please, sir?

149 comes into issue because it involves the credibility of Mr. Rizzo. It is because of that, I assume, that it was later submitted to Mr. Oberg for his opeinion with respect to it.

Mr. Rizzo, your Honor will recall, testified that the document was not written by Mr. Denti. He didn't know by whom it was written, although at the bottom of 149 Mr. Rizzo made a statement that it was, in fact, written by Mr. Denti, and the statement is in Mr. Rizzo's handwriting.

Now, it seems to me -- and if I am wrong I will acknowledge it at lunch if so advised -- that the only purpose for having this witness testify with respect to 149 is to attempt to bolster the credibility of Mr. Rizzo.

THE COURT: Suppose you areright, what is the point?

MR. BRILL: I don't thinb 149 should be included.

THE COURT: He is not allowed to try to bolster the credibility of a witness?

MR. BRILL: Agovernment agent supporting another government agent --

THE COURT: He is not allowed to do that?

MR. BRILL: I don't think, Judge --

THE COURT: What is your point?

MR. BRILL: I just don't think it is fair.

THE COURT: Overruled.

(End of side bar conference.)

(In open court.)

THE COURT: I believe there is a pending question way back somewhere.

(Question read.)

Q Mr. Oberg, what is your conclusion?

A My conclusion is that some of the endorsements on Government's Exhibits No. 1 through 48 were prepared by the writer of Government's Exhibits Nos. 146 through 149.

Q Mr. Oberg, did you prepare photographic enlargements of Government's Exhibits 146 through 149?

A Yes, sir, I did.

Q I'd like to show you at this time --

MR. SILVERMAN: Your Honor, at this time may I request that the witness testify from over here by the blackboard? I think things will move along much quicker.

THE COURT: Sure.

MR. SILVERMAN: Mr. Oberg, would you like to stand over here, sir.

(Witness leaves witness stand.)

Q Are these the photographic enlargements, Mr. Oberg?

A These are the photographic enlargements of Government's Exhibits 146 through 149.

Q Did you also prepare a photographic enlargement of --

MR. BRILL: May I look at this for just a moment.

THE COURT: Sure.

MR. BRILL: May we approach the side bar, your Honor.

THE COURT: Yes.

(At the side bar.)

MR. BRILL: What is marked as 149-A is not a photographic enlargement of 149. There was omitted from it the bottom line.

MR. SILVERMAN: I can ask him, your Honor.

THE COURT: Is there any other discrepancy?

MR. BRILL: No, that's the only one I see.

THE COURT: You don't have to approach the side bar for that.

MR. BRILL: All right, thank you, sir.

(In open court.)

Q Mr. Oberg, did you also prepare the photographic enlargement of five checks?

A I prepared a photographic enlargement of the endirsements on the reverse sides of the five checks.

Q I show you Government's Exhibit 150 for identification and ask you if you recognize that exhibit?

A Yes, sir. This is the photographic enlargement, a composite of the 45 endorsements on the checks.

Q From what check numbers did you prepare a photographic enlargement?

A The check numbers were 6653, 7627, 6847, 7628, and 9849.

MR. SILVERMAN: The Government offers in evidence at this time Government's Exhibits 150 and 146-A through 149-A.

THE COURT: Any objection?

MR. BRILL: I object to them if your Honor please as not binding upon Mr. Paterno.

MR. ROSENTHAL: I object to 149-A for the reason previously stated at the side bar with respect to the use of 149 by this witness.

THE COURT: All right, the objections are overruled. They will be received.

(Government's Exhibits 146-A through 149-A received in evidence.)

Q Mr. Oberg, using these exhibits you have in front of you, will you explain to the jury the reasons for your conclusions that you have previously made.

A I'd like to begin with the John Aurrichio signatures or endorsements I should say, which appear on the reverse side of Government's Exhibit 149. These are the enlargements, however. The checks are 6653 and 7627.

The capital letter J in the word John actually

begins in reverse fashion, most people will make it by swinging the initial stroke up to the left and then forming the top arch. These are swinging from the left to right to form that arch before proceeding down to form the bottom loop.

This is also evidenced in Government's Exhibit No. 146-A where the arches begin in the same manner, they swing from left to right to form the arch in a reverse manner.

The O in the word John is an open letter O and the second portion of the O is higher or stands above the intial part of that letter O.

That also is found in Government's Exhibit No. 146-A where you find it is an open letter O and in the top portion ascending or higher than the initial portion of that letter O.

The letter H of course is open, the letter H and the arch formation is not attached or abut next to the staff of that letter H, it is separate and it is a pointed letterH. This letter H is also found in Government's Exhibit 146-A, it is an open loop and of course the arch does not abut against the staff of the letter but it is apart, and it too is a pointed arch.

The letter N in the word John, check No. 7627, is an open letter N, in other words, there is a trough between

the two pointed arches and that also is found in Government's Exhibit 146-A.

The capital letter A actually starts on the right side above the three o'clock position, and it arches in a counterclockwise motion forming a very high loop formation at the top.

That letter A is also found in Government's Exhibit No. 146-A, and also in Government's Exhibit No. 149-A, you have this same A formation.

The letters R in the word Aurrichio, on the two checks, 6653 and 7627, are in ascending motion, in other words, the second letter R is higher than the first initial letter R. This also is found in Government's Exhibit 146-A. It forks, it makes a kind of a rising formation, and then falls down when it reaches the letter H.

The letter C has a little tick formation at the top of this letter C, it is almost a little pretzel formation in the letter C. This is also found in Government's Exhibit No. 148. We have many C's present. You have these little arches or pretzel formations in that letter C.

Again referring to the letter H it is like the preceding one in the word John, an open loop formation followed by a pointed arch which is separate from the staff of the letter. And the letter O here in check No. 6653

is not really closed but it has a separate stroke added on or attached to the O. This also appears in Government's Exhibit No. 149-A where you have an attached stroke on to the letter O.

In the other check, 7627 you do not have the attached stroke and of course this appears in Government's Exhibit No. 146-A where you just have it ending up in an open letter O.

The two signatures, Arthur Lazravitch on checks No. 6847 and 7628. Again you have this large looping letter A as we find in Government's Exhibit No. 146-A and 149-A. The R is a pointed letter R and these letters R are also found in Government's Exhibit 147-A. It points up and then just kind of rools over on the back side or the right side of that letter R.

The letter T in the word Arthur is shorter than the letter H. Consistently throughout the words Arthur in Exhibit 147-A, you find the same situation.

The letter H again has that open loop and the pointed arch which is sparate and apart from the initial part of the letter which is found in Government's Exhibit 147-A. The letter R in Arthur again is a rather pointed letter R. This one is narrow, and as is the one on check 7628. You find that this is a rather pointed letter R

as is this one and this one in Government's Exhibit 147-A.

The letter R ends in a tick formation or just a short backward stroke and this develops also in Government's Exhibit 147-A where you have a little ticking formation or just a short back stroke.

The capital letter L is unusual in that the bottom loop formation is almost a triangular formation. This letter L is also evident in Government's Exhibit 147-A.

The letter Z actually, it's not lying on a horizontal plane,the arches of that letter Z in both the endorsements and this same letter Z where the arches are lying in horizontal fashion are found in Government's Exhibit 147-A.

The letter T in Lazravitch is higher than the letter L which is just opposite of the H formation in the word Arthur. In Government's Exhibit 147-A, you find the T is higher than the letter H in many of the signatures.

The letter C again has this little tick formation, almost a pretzel formation, and that appears in Government's Exhibit No. 147-A in the fifth signature down, it is also evident in the ninth signature down and others.

And again of course the letter H has this loop formation and the pointed arch formation which is pointed here, which is not abutting up against the initial part of

the letter H, and in check No. 7628 it just kind of falls away from the arch in an ending stroke and this is found also in Government's Exhibit No. 147, it just kind of falls away.

Then in the last check 9849, we have the signature of Thomas Tuccella, in which you have a rather unusual letter T and it arches up to the upper right first before swinging down to the base line of writing and then curving abruptly in following with the loop formation. This letter T is also found in Government's Exhibit 148-A. The initial stroke of the letter H in the word Thomas begins beneath or under the letter T. This is also found in Government's Exhibit 148-A.

The H again as I explained has this open loop formation and pointed arch formation which is separate and apart from the staff of the letter leaving a trough between here and it is also evident in Government's Exhibit 148-A.

The letter O has an open loop formation at the top or at the terminating portion of that letter O. This is also found in the word Thomas on Government's Exhibit 148A.

The letter M has a trough between the arches and the last one is a rather pointed arch. This also is found in Government's Exhibit 148-A.

The letter A ends with a small loop formation

and the loop formation of the letter A is also found in Government's Exhibit 148-A.

The letter S which is rather pointed, it ends very abruptly in a backward stroke in the lower right to upper left and it is not completely closed. This letter S is also found in Government's Exhibit 148-A.

In the word Tuccella here we have the same unusual T that we had in the word Thomas. The initial stroke for the succeeding letter U begins right at the bottom of the letter T, this is also found in Government's Exhibit 148-A, and this signature here begins right at the bottom of the T as it does in the signature here (indicating).

Again we have these little pretzel or peak portions in the letter C. This is also found in Government's Exhibit 148-A.

The two letters L which are open loop formation, the second one is taller or higher than the first one. They are in an ascending order. This is also found in Government's Exhibit No. 148-A.

And the final letter A is a double loop formation and you can see the two open loops in that letter A which are also found in Government's Exhibit No. 148-A.

Q Mr. Oberg, I'd like to show you Government's Exhibit 156 for identification and ask you if you recognize

that exhibit?

A Yes, sir, this appears to be a laboratory report which I prepared.

Q Did you prepare a laboratory report on the handwriting testimony that you just gave, sir?

A Yes, sir.

Q Mr. Oberg, I asked you before if you had an opportunity to examine the invoices in that folder that was on your right?

A Yes, sir.

Q Did you examine them in your lab in Washington?

A Yes, sir.

Q As a result of your examination of the typewriting on those invoices, have you reached and formed any conclusions as to the typewriting that appears on those documents?

A Yes, sir.

MR. ROSENTHAL: Will the witness return to the witness chair, Judge?

THE COURT: Is there any reason why Mr. Oberg --

MR. SILVERMAN: He is going to be coming back here in one second, your Honor.

Q I show you Government's Exhibit 157 for identification and ask you if you recognize that exhibit, sir?

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A Yes, sir, this is the laboratory report I prepared in connection with the typewriting examination.

Q And what were the conclusions that you reached in relation to the typewriting that appears on these invoices?

A Well, the invoices were submitted to me in groups under various business establishment names, and under the name of Arthur Lazravitch, Michael Catenzaro, John Aurrichio, Thomas Tuccella, Anthony Ferrotta, and as a result of examining these I was able to identify two of the documents submitted to me --

MR. ROSENTHAL: Your Honor, I think we should have a side bar before we go any further with this particular line of testimony.

THE COURT: What is the objection you want to make?

MR. ROSENTHAL: The objection I want to make is that what the witness is about to state is not in any way related to, and so far as I know has never been connected with or any claim of ability to connect with my client George Denti, and I assume the same is true of Mr. Brill's clients, Mr. Paterno and the corporation.

MR. BRILL: That is correct, sir.

THE COURT: Well, if there is no connection I will so instruct the jury, but let me hear the testimony.

MR. ROSENTHAL: Might we have an offer of proof,

Judge, because once the testimony is before the jury, it has been my humble experience that instructions may be able to expunge things from the jury's mind and many times may not be able to expunge them from their minds.

THE COURT: I understand that but if it is things that have no connection with somebody I think the jury is able to make connections and to discern the absence of connections under an appropriate instruction.

Let me hear the question.

MR. ROSENTHAL: Respectfully except.

MR. SILVERMAN: The question is, your Honor, whether or not --

Q Mr. Oberg, whether or not you formed any conclusions as to the typewriting that appears on these invoices?

A Yes, I have.

Q What are your conclusions, sir?

A Well, as I explained, these documents were submitted to me under the listing of various business establishments and I was able to identify the typewriting on two of the documents submitted under the business establishment name of Arthur Lazravitch with the typewriting on four of the documents submitted under the business establishment name of John Aurrichio.

Q Did you draw the conclusion, sir, that these

six typed douments were prepared on the same typewriter?

A Yes, sir.

Q I show you Government's Exhibits 1 to 4-A, 14-A and 15-A and ask you if these are the invoices from which you formed those conclusions?

A Yes, sir, they are.

Q Did you prepare, sir, photographic enlargements of one of the invoices from one group and one of the invoices from the other group?

A Yes, sir.

Q I'd like to show you Government's Exhibit 1-B and 14-B for identification and ask you if these are enlargements of 1-A and 14-A, sir?

A Exhibit 1-B is a photographic enlargement of Government's Exhibit 1-A and Exhibit 17-B is a photographic enlargement of Government's Exhibit -- excuse me, 14-B -- sorry -- of Government's Exhibit 14-A.

MR. SILVERMAN: The Government at this time offers 1-B and 14-B in evidence.

MR. BRILL: I object to that on behalf of Mr. Paterno and the corporation, your Honor. There is no connection with either, and I think it will be acknowledged that they are not connected by any of the standards pertaining to the corporation of any typewriter connected with the firm.

MR. ROSENTHAL: And I make the same objection in respect to my client, George Denti.

THE COURT: Overruled.

MR. ROSENTHAL: There is no connection whatsoever with him or any claim that anything that he had control of could have produced these exhibits.

THE COURT: I do not think you should tell us what there is a claim of or what there is not a claim of. The connections on this kind of evidence are matters for inference that may be argued one way or the other, and the respective claims I will allow counsel to make for themselves on each side.

Objection overruled.

(Government's Exhibit 1-B and 14-B now received in evidence.)

BY MR. SILVERMAN:

Q Mr. Oberg, will you please hand up the exhibits.

(Witness complies.)

Q Mr. Oberg, by using these enlargements will you please demonstrate to the jury your conclusions as to these two exhibits?

A Yes, sir. Through the use or misuse of a typewriter they do develop certain characteristics or identifying marks by which we can establish whether or not they were prepared on the same typewriter.

To begin with, first of all, I have determined that they were the same size and style of type, which they are. Then I looked for the characteristics in this typewriting which would show whether or not they were prepared on the same typewriter.

In the word 'New" of"New York" the small letter "w" shows that the serif or the little finishing stroke at the top of that letter has been damaged and it is shorter on the right side than it is on the left.

The same letter "w" is found -- oh, that was on Government's Exhibit 14-B that I just explained. This is on Government's Exhibit 1-B. The "w" here in the word "New York" has that same serif damaged on the right side.

The letter "p" in the word"per" on Government's Exhibit 14-B, the serif is damaged to the extent that it is shorter on the left than it is on the right.

In Government's Exhibit 1-B, in the word "complete" the letter "p" has the serif shorter on the left than on the right.

The letter "o" in the word "rour" on Government's Exhibit 14-B is flattened on the side of that letter "o" -- it's flattened out.

The letter "o" in the word "for" of Government's Exhibit No. 1-B has that same condition -- it has been flattened out or damaged on the left side.

The letter "g", the low bottom, left side of the lower loop has been damaged in the word "agreement" on Government's Exhibit 14-B.

In the word "billing" the letter G on Government's Exhibit 1-B, the "g" exhibits the same damaged characteristic.

In the letter "m" there are two characteristics, in that the left portion of the left serif or bottom finishing stroke and the right portion of the right serif have both been damaged -- they are shorter than they should be.

In the word "Juniper" in Government's Exhibit 1-B, the "n" exhibits the same characteristics.

The letter "h" in the word "chauffeur" on Government's Exhibit 14-B has the serif on the left side

shorter than it is on the right. In the word "chauffeur" on Government's Exhibit 1-B that same wear characteristic is evident.

In the letter "u", the serif in the word "chauffeur" on Government's Exhibit 14-B, the type of serif should be of equal lengths. However, the left serif has been damaged and is shorter than on the right.

Then the letter "u" in the word "chauffeur" on Government's Exhibit 1-B has that same characteristic.

On the basis of these characteristics I concluded that these two documents and others were prepared on the same typewriter.

Q Mr. Oberg, I would like to show you these invoices, that of John Aurrichio, Arthur Lazravitch and Thomas Tuccella, Nos. 5, 6, 9, 10, 11, 12,16, 17, 30, 31, 36, 37, 38, 39 and 40-A and ask you to examine those invoices, sir (handing).

(Witness examines.)

Q Mr. Oberg, in order to save time, those are the same invoices that you saw in my office yesterday?

A Yes, sir.

Q And are they the same invoices that you examined at your lab at the FBI?

A Yes, sir.

Q And did you prepare photographic enlargements of any of those exhibits?

A Yes, I did, sir.

Q Did you prepare photographic enlargements of one invoice of each one of that group?

A Yes, sir.

Q I would like to show you Government's Exhibits 17-B, 5-B and 36-B for identification (handing). Are these the enlargements?

A Yes, they are.

Q And are they the enlargements respectively of 17-A, 5-A and 36-A?

A Yes, sir.

Q Did you form any conclusion as to the typewriting that appears on all of the exhibits that I have just shown you?

A Yes, sir. I concluded that the --

Q Did you form any conclusion?

A Yes, your Honor.

MR.SILVERMAN: Your Honor, at this time I would like to offer in evidence these three enlargements, 17-B, 5-B and 36-B.

MR. BRILL: My objections are the same, your Honor.

I would like to add that I have observed that they do not seem to be complete in respect of the standards that are employed. There is omitted from them -- from the top of the invoice itself. In other words, your Honor --

THE COURT: Yes, I understand what you mean. The top of the invoices is omitted, and that may be drawn to the attention of the jury.

I take it the top of the invoice plays no part in the purpose for which the enlargement was made.

MR. SILVERMAN: Thatis correct, your Honor.

THE COURT: All right, you may draw that to the jury's attention again.

MR. ROSENTHAL: And I offer the same objection that I offered previously.

THE COURT: Overruled.

(Government's Exhibits 17-B, 5-B and 36-B were received in evidence.)

BY MR. SILVERMAN:

Q Mr. Oberg, will you please hang up those exhibits?

(Witness complies.)

Q Mr. Oberg, could you please explain, by using these enlargements, your conclusions to the jury as to

this group of exhibits?

A This group of exhibits, consisting of Government's Exhibit 17-B, 5-B and 36-B, I concluded that the typewriting represented by these exhibits were prepared by a typewriter equipped or typewriters equipped with the same size and style of type. There were no actual characteristics by which I could state that they were made on the same typewriter.

My conclusion is that they were only prepared on a typewriter equipped with the same size and style of type.

Q Were there any different characteristics among any of these samples, of these invoices that you were just shown, as to the typewriting that appears on all of these exhibits?

A No, sir, there were no characteristics by which I could state that they were prepared on different typewriters either.

MR.SILVERMAN: I have no further questions, your Honor.

MR. BRILL: I move to strike the last two answers to the questions as being completely without probative value.

THE COURT: Let me hear the last two questions and answers.

(Record read by the reporter.)

THE COURT: All right, the motion is granted. The last two answers are stricken, and the jury is instructed to disregard them as being of no probative value. You will disregard them, ladies and gentlemen.

All right, cross examination.

(Witness resumes the stand.)

CROSS EXAMINATION

BY MR. ROSENTHAL:

Q Mr. Oberg, I will take them in reverse order.

When you were shown or given samples or documents to examine in respect to typing were you given any standards of any suspect typewriters?

A No, sir.

Q In other words, nobody sent you any document and said "This is a typewriter that was in the office of Paterno & Sons, Inc."

A That's right.

Q And "This is a sample of typing that was done on a typewriter in the offices of Paterno & Sons, Inc."?

A That is right.

Q You did not have any such there?

A No, sir.

Q And when you tell us that some of the bills

or invoices submitted by truckers or contractors were typed on the same typewriter, you do not profess to know under what circumstances, do you?

A No, sir.

Q And you have heard of firms that do typing service?

A Are you asking me?

Q Yes. I say, you have heard of firms that do typing services for the general public?

A I have heard of them, yes.

Q You have heard of firms that do billing and bookkeeping for the general public?

MR. SILVERMAN: Objection, your Honor.

THE COURT: Sustained.

Q Now basically, if I am correct, your basis of comparison was twofold: No. 1, that it was the same type, is that correct?

A No, sir, that is all in one examination.

Q No, what I say is, that was one of the things that led you to the conclusion that it was the same typewriter?

A That was one of the initial things when I found how they were the same style of typewriter, I could examine them more deeply further.

Q And that in and of itself is not unusual, is it -- the same style of typewriter?

A Oh, no, sir.

Q And then, basically, you found certain letters that seemed to be worn?

A They were, not seemed to be -- they were, sir.

Q The o's, for instance -- is that correct?

A Yes, sir.

Q And that is the letter that is most commonly does get worn in a typewriter, does it not?

A No, sir.

Q What is the most common letter -- what is the letter that most commonly shows wear and tear in the average typewriter?

A Well, perhaps the serif or the bottom portion of the letter "a".

Q And did you find that condition here?

A No, sir.

Q And you did not find the "a" similar, did you?

A I did not find them dissimilar.

Q I appreciate that but you did not find them -- all right, I will withdraw that.

When you say you did not find them "dissimilar", that was not unusual, was it?

A No, sir.

Q That was quite common, was it not, to find typing

done on the same make and same type style typewriter, to find it not dissimilar?

A Proving it hasn't been damaged it is not unusual.

Q And was there anything about the typing itself, aside fromthe letters and the typography, was there anything about the typing itself that was similar?

A Well, I suppose the format of the invoices.

Q What is that, sir?

A The format of the invoices were somewhat similar.

Q Well, was it anything unusual as to the format of the invoices?

A I don't know because I am not a businessman of that nature, and I am just saying they appeared similar to me as I examined them.

Q Now, sir, these are the most recent --

MR.SILVERMAN: These are the last ones (indicating).

MR. ROSENTHAL: May I have the other ones?

MR. SILVERMAN: Mr. Oberg, will you please hang up the other typewriting samples that you testified to, sir?

(Witness leaves the stand and complies with the request.)

Q Mr. Oberg, do you do any typing?

A No, sir, I am not a typist.

Q No, I am not a typist either, but I say, do you do any typing yourself?

A On occasion I will write a message out.

Q Now I call your attention to Exhibit 1-B and 14-B. You have a series of figures there, do you not?

A Yes, sir.

Q In each of these exhibits.

A Yes, sir.

Q And that is called tabular matter, is it not?

A I wouldn't know, sir.

Q Well, sir, do you know from your years of experience -- have you learned and observed that unless a person is a skilled typist they will not have the tabular matter in alignment?

MR. SILVERMAN: Objection, your Honor. Is Mr. Rosenthal making Mr. Oberg his expert as to that particular area?

THE COURT: I will allow it.

THE WITNESS: Would you repeat the question, please.

(Question read.)

Q And by "tabular matter" I mean in numerical

order -- the numbers and figures that appear there (indicating).

A Well, sir, I really haven't seen enough of these documents to make a study of them.

Q You do not do much on typewriting.

A No, sir. I dictate it and let the typist handle it.

Q Would you return to the witness chair, please, Mr. Oberg.

(Witness resumes witness chair.)

Q As an examiner of questioned documents in the Federal Bureau of Investigation, commonly known as the FBI, have you done much work with respect to typewriter documents -- typewritten documents?

A Yes, I have done quite a little.

Q And have you testified in court before with respect to typewritten documents?

A Yes, sir.

Q How many times?

A I really couldn't tell right offhand how many times I have testified on that particular phase of document examination.

Q Well, sir, in the documents that you have examined in the past have you had any what I call

tabular matter -- any numbers appearing on the documents?

A I don't recall that either, sir, I really don't.

Q Well, sir, wouldn't the alignment help you to determine whether or not a particular document was typed on the same typewriter?

A I doubt that it would have any effect on what kind of typewriter was employed.

Q What was that?

A I say, I doubt the alignment would have any effect on determining what typewriter was employed -- unless, of course, the typewriter was defective and did not hold its facings or slipped or something of that nature.

Q Well, that is not unusual, is it, particularly with an older typewriter that has a battered "o"?

A Well, I do not know if this typewriter is an old typewriter with a battered "o".

I do know that the characteristic does exist and it might be that it is a relatively new typewriter which is used extensively . I do not know the age of the typewriter.

Q Do you know what typewriter this was typed on or what make?

A It was an IBM typewriter.

Q IBM pica type, is that correct?

A Yes, sir -- pica, as I call it.

Q Pica -- I accept the correction -- a very common typewriter, is it not?

A Well, IBM makes a number of typewriters but not all with this particular style of type.

Q No, but they made many, many with this particular style type, have they not?

MR.SILVERMAN: Objection, your Honor.

A I don't know --

THE COURT: Wait a second. There is an objection. Please wait.

What is the ground of the objection?

MR. SILVERMAN: The government will concede that there are many typewriters of this type existing in the world.

THE COURT: Well, ifyou concede it it should not be objectionable.

The answer is "yes, there are many like that".

THE WITNESS: I really don't know.

THE COURT: He does not know.

Q You as an expert, sir, examining questioned documents and appearing in court to testify concerning them, have you ever ascertained the number of IBM pica or pica typewriters there are in existence?

A No, sir, because pica is a term that refers only to the size of the type.

Q To the type base?

A Not the particular type style. It is the size of the type.

Q The size?

A Yes.

Q What particular type style is that?

A That is merely a standard style of type for IBM.

Q That is what almost any IBM machine would have unless you order something special, isn't that true?

A I couldn't state that because I am not an IBM salesman --

Q I am sure you are not but didn't you think it necessary in connection with your expertise and the fact that you were going to come to court, and you have gone to court and you have testified as an expert -- have you ever bothered to inquire of IBM?

MR. SILVERMAN: Objection, your Honor, as to the volume.

THE COURT: Yes, I do not think it is necessary, Mr. Rosenthal.

MR. ROSENTHAL: I am sorry, Judge.

THE COURT: But the reporter will repeat the

question and the witness may answer it.

(Record read.)

A No, sir, I have not.

Q And do you have any statistics or any material available to you concerning the number of IBM typewriters in existence in the world using this type style and this particular size style?

A No, sir, that information would have to come from IBM itself.

Q You have nothing?

A No, sir.

Q Neither in your office in Washington nor in your laboratory in Washington or with you here today?

A No, sir.

Q Do you know whether this was done on a B model and C model or an A model of the IBM electric typewriter?

A No, sir. I don't know what you are referring to when you say A, B and C models, but I do know that it was not prepared on an IBM executive typewriter.

Q Well, even I can see that.

Sir, as an expert, are you not aware of the fact that through the years IBM in manufacturing electric typewriters, not executive, standards, have come out with different models?

A Yes, sir.

Q And you know that their original, I believe, was called the A model?

A That could be. I am not familiar with that.

Q And then years later they came out with another one that they called the B model?

MR. BRILL: I can't hear the witness.

THE COURT: Is that a question?

MR. ROSENTHAL: Yes.

THE COURT: He told you before he never heard of A, B and C and now you are asking him one at a time.

MR. ROSENTHAL: I hope to be able to refresh his recollection.

THE COURT: All right, that is the question.

Do you know that they came out with the B model?

THE WITNESS: I am not familiar with the B model.

THE COURT: Next question.

Q Are you familiar with the current model?

A I don't know what you mean by the current model.

Q Well, the one that IBM is selling as of February 13, 1974?

A Well, as of February 13, 1974 IBM is selling many different models.

Q Many different models?

A They are not limited to a singular model.

Q Well, do you know whether or not they have a model name or number or allocation or a letter allocated to the current standard IBM typewriter?

A I don't know if they have a number allocated to a different typewriter, but I do know they make the executive model which they are selling, they have a standard model which they are selling; they also have what

they call the Selectric typewriter which they are selling.

Q Now, we have been talking here concerning Exhibits 1-B and 14-B, have we not, sir?

A Yes.

Q And we are all in agreement,are we not, that these were typed on a standard model IBM?

A Yes, sir.

Q With Pica type, is that correct?

A Yes, sir.

Q So we have not been talking about Selectrics, have we?

A No.

Q We have not been talking about Executives, have we?

A No, sir.

Q Is there any reason why you volunteered that information?

A I didn't volunteer it. It was in answer to a question, sir.

MR. ROSENTHAL: May we have a change of scenery, your Honor? May we have the handwriting placed on the blackboard?

THE COURT: I guess we will give the jury a

10-minute recess while we are replacing those.

(Jury left the courtroom.)

THE COURT: Gentlemen, let me just keep you for a minute.

I have a note addressed to me by alternate juror No. 1, Mr. Cutner, which I will have marked Court's Exhibit No. 1.

Mr. Cutner has shown a persevering and valiant interest in getting out of jury service in this case, initially because of his business concerns, and Providence, according to his note, has now favored him with an earache, and he has a doctor's note attached. I do not, as my tone indicates, take a kindly view of Mr. Cutner's enterprise, and I am disposed to ask him to produce an affidavit of his own and of the doctor whose note he attaches to his note.

Unlike most doctors this one has a legible handwriting, but it is still not sworn and evidence. I will solicit your views. We have three other alternates. I will let you look at the note. Mr. Cutner wants to get excused at the end of the day.

Let me know at the end of the lunch hour your respective views if any, after you have looked at the note, and I will do whatever the weight of wisdom

dictates.

(Court's Exhibit 1 was marked.)

(Recess.)

(In open court; jury present.)

MR. ROSENTHAL: Would you return to the witness stand, please, Mr. Oberg.

(Witness returns to witness stand.)

BY MR. ROSENTHAL:

Q Now, Mr. Oberg, going back to the typing just for a moment, or the typewritten material, shall we call it, really what you found in the two exhibits was typing that had been done on a machine that appeared to be old and worn, isn't that correct?

A Well, sir, I can't really say that it was old and worn, because there could be a relatively new machine that had been used extensively and developed these same characteristics.

Q Right. And is it within the realm of possibility, whether it be a new machine that had been extensively used, or an older and worn machine that had been extensively used and had developed problems that you have related - could you not have two machines develop the same or similar problems?

A Not in my opinion, sir.

Q Not in your opinion?

A No.

Q Suppose there were two machines manufactured on the very same day and came off the assembly line one immediately after the other, and there was a latent defect or defects in each of the machines, would it not be probable that the two machines would develop the same defects that you have described?

MR. SILVERMAN: Your Honor, my question is, what type of defects and how many?

THE COURT: Well, I guess I have a question too, Mr. Rosenthal, which may or may not be important.

I don't quite understand whatyou mean by latent defect.

MR.ROSENTHAL: Well, Mr. Oberg has, I think, testified that the defects that he found in the typing, particular he said that the o was worn, and he said, I think it may have been caused by damage --

THE COURT: He enumerated the o, the w, or whatever he said the jury will remember.

Go ahead.

MR.ROSENTHAL: He said it may have been caused by damage; it may have been caused by abuse or it may have been caused, I think you said, by normal wear and tear.

THE COURT: All right. What do you mean by latent defect?

MR. ROSENTHAL: Well, he said there may have been new machines --

THE COURT: Don't tell me what he said. Just tell me, please, what do you mean in this setting by the phrase "latent defect?" I ask you because it help to englighten the jury as well as me.

MR. ROSENTHAL: What I mean, Judge, was, Mr. Oberg had not precluded the fact that they might have been brand new machines or comparatively new machines, and if they had developed this wearing that he had described, it certainly would be as a result of a latent defect in the type face, because the new machine should not have the old worn thin, as Mr. Oberg has described --

THE COURT: You are sort of giving expert testimony yourself at this point.

I don't know how typewriters or automoible or vacuum cleaners wear, and that is why I am asking you what is a latent defect. All of things and creatures wear, and I think the phrase "latent defect" frequently has a meaning for lawyers. If I thought it was necessarily meaningless I would not ask you to define it. I would just say you may not use it. Now I am asking you to define

it.

MR. ROSENTHAL: Well, what I mean by latent defect is a defect that would not be apparent to the eye in looking at the machine itself.

THE COURT: When it was new?

MR. ROSENTHAL: That the defect was there, and that as a result of normal wear and tear, the wear on the machine or on the type face is excessive.

THE COURT: Okay.

MR. ROSENTHAL: That is basically what I meant.

THE COURT: Now Mr. Silverman suggests -- and I think with some merit -- that you ought probably to incorporate in your hypothetical a number of defects that is comparable in some way to what we have heard testimony about.

MR. ROSENTHAL: May I look at Mr. Oberg's report on this.

BY MR. ROSENTHAL

Q Now, sir, if my recollection serves me correctly, you pointed to the o as being worn on one side, is that correct, sir?

A It was damaged. Whether or not it was worn or just a damaged letter, I didn't state. I said it was damaged.

Q And you also pointed to the W?

A Yes, sir.

Q And that was also worn in the same location, is that correct?

A It was damaged also.

Q Damaged. All right, we will use the word damage instead of worn.

A Yes?

Q And I think the letter A you found some problem with, did you not?

A I don't recollect mentioning the letter A.

Q Well, what other letters were there?

A I believe there was the letter N, the letter H, the letter P --

Q And O?

A I did mention the O and the W.

Q Those are the letters?

A And the letter u.

BY MR. ROSENTHAL:

Q Now, sir, did you compare the alignment of the type?

A Yes, I did.

Q Were there any noticeable variations, or any noticeable similarities?

A Well, there were similarities in the respect that it didn't find any variances in the alignments in either of the documents.

Q But those were similarities that you would expect to find in a typewriter, were they not?

A Provided there was no damaging, yes, sir.

Q Providing there was no damage.

Now, normally, a typewriter that has suffered either the wear or the damage that you have described to the letters, wouldn't that also affect the alignment?

A Not necessarily, sir.

Q And, sir, if, again, two typewriters were manufactured at the same time, came off the assembly line, one following the other, and there were defects in the type face that caused the type face to become worn in the spots and in the letters that you have described here, sir, would not the alignment of them be practically normal unless some particular damage to the alignment?

A I am not quite sure I understand your question, sir, but you say defects which are not noticeable?

Q No, I said the defects which you have demonstrated to us and told us about, but that the alignment itself, there is nothing unusual about it?

A In this particular case the alignment in both of the documents or all the documents represented by those I have on the board was the same.

Q Well, was the same, or was just not unusual, which was it?

A Well, it was the same in the respect that there was no unusual alignment, or misalignment, I might say.

Q All right. You didn't take a ruler or calibrator or something else and measure the alignments, did you?

A Yes, I did. I had a magnification with a line, straight line, in that magnification, and I could set it up and measure the alignment and all these letters.

Q Right. And you found that they were within the normal range, is that right?

A That is correct.

Q You don't say that you could have taken a transparency and set one on top of the other, do you, sir?

A No, sir.

Q Incidentally, and I will be finished in a moment

with that, in connection with the typewriting material, did you do any special work or give any special attention to the numerals appearing in that material?

A I gave them as much attention as I gave every other letter.

Q And did you come up with any peculiarity or damage, I think is the word you preferred to use, in respect to the numerals that were applicable in both exhibits?

A No, I didn't find any.

Q And from the material submitted to you, sir, it would appear that the numerals were more often used than the written part, would it not?

A I believe that there were quite a number of numerals in a row or oblated but I didn't find any characteristics in them.

Q You mean you found nothing unusual?

A That's right.

Q So that from that you would not attempt to say that it was the same instrument, isn't that correct?

A I don't quite-- the same instrument? I don't understand you, sir.

Q I am not trying to be devious.

As I understand it, you base your conclusion or your opinion upon the fact that you found certain letters

which you say appeared to be damaged and which are not usual, not in the condition or appearance that they usually would be, is that right?

A Yes, sir.

Q And if you find some that look perfectly natural, and doesn't give any appearance of damage, and is what you would normally expect to find in hundreds or thousands of typewriters using the same type, you would say that that does not permit you to form any conclusion, the normalcy does not permit you to form any conclusion, does it?

A No, let me get this straight.

The letters with defects or damage, along with the letters which are normal, intermingled on the same document?

Q No, I'm sorry, sir.

We will go back once more.

If you found two documents, and you found a great deal of normalcy, let's say 99-- like Ivory soap, 99.44/100%, no question typed on the same make typewriter, no question the same type size, but everything is normal; that could not--

THE COURT: Now, do youmean everything? Because the question, Mr. Oberg asked occurred to me, too.

Are there no abnormalities in your hypothetical?

MR. ROSENTHAL: There are no abnormalities.

THE COURT: Okay.

MR. ROSENTHAL: That's why I was repeating it because I realized when I asked it, I might not be very fair.

Q Everything normal. You would not be able to form any opinion, would you, sir?

A No, sir.

Q Now, getting down to the handwriting, you were furnished with samples, exemplars of George Denti's handwriting, were you not?

A I was furnished with samples of writing which they say were George Denti's, yes, sir.

Q Right. And that's Exhibits what, sir?

A That was Exhibit No. 146 through 149.

Q Now, when did you receive 149?

A I don't recall the exact date but I think it was in February of last year.

Q Of last year?

A Yes, sir.

Q Is 149 the one with the three names on it?

A This one.

MR. SILVERMAN: Your Honor, may we have a side bar at this time? I have noticed something in the statement that was made before that is not accurate and I'd

like to bring it to the Court's attention.

(At the side bar.)

MR. SILVERMAN: Your Honor, a statement was made and an inference was made only at the side bar that there was a possibility that we were using the testimony of the agent to bolster Agent Rizzo as to this particular document.

I'd like to read to you from Court Exhibit 156 for identification.

It says under K -2,"four sheets of paper bearing no known handwriting of George Denti."

So,your Honor,at that time he was furnished with all four copies, not at a later date, but--

THE COURT: Who?

MR. SILVERMAN: Mr. Oberg. And those are the exhibits that he had and he had those four.

Now I recollect that if I produced handwriting samples they were of all four.

THE COURT: How long have defendants had this?

MR. SILVERMAN: This was given to them not by order, not by motion, but voluntarily, back in June of this year; I gave Mr. Brill a copy of this report, the handwriting report.

MR. BRILL: I am a little unclear about this,

Judge. It is my understanding that 149 consists of one sheet.

THE COURT: 146, 7,8 and 9 would be four sheets.

146, 147, 148 and 149. Yes.

Earlier at the side bar you told me you only had gotten three.

MR. BRILL: I told you that we had not seen 149.

THE COURT: I know. Mr. Silverman called me up here to suggest that your recollection may be in error.

MR. BRILL: No, my recollection is correct. We have never been furnished with 149. We were furnished with 146, 147 and 148. I don't recall at this time whether I can fix that date by looking in a letter when it was sent to me.

THE COURT: All right?

MR. SILVERMAN: I wanted to call to the Court's attention the fact that there were four pieces of paper handed to Mr. Oberg at the time and not three, and the report so indicates.

THE COURT: Okay.

(In open court.)

BY MR. ROSENTHAL:

Q Now, Mr. Oberg, you received 146 through 149 back

in February of 1973, is that right?

A To the best of my recollection, yes.

Q Approximately?

A Yes.

Q And did you receive any other standards of handwriting at that time?

A Yes, sir, I did.

Q And what standards did you receive, sir, purporting to be the handwriting of whom?

A Well, sir, I don't have my material with me. I left it over there on the desk. But there were a number of individuals.

Q Well, may he, your Honor-- he has them.

(Documents handed to the witness.)

A I have the standard which were purportedly prepared by Michael Paterno, Louise Ferraro, James O'Reilly, May Nunkin, John Aurrichio, George Lazravitch and Louis P. Tuccillo.

Q Were you furnished any standards prepared by Salvatore Minichino or Minicino?

A Not as far as I recall .

Q Were you furnished with any standards of Anne Altro?

MR. SILVERMAN: Objection, your Honor, as to

relevance.

THE COURT: What is the relevance, Mr. Rosenthal?

MR. ROSENTHAL: What, sir?

THE COURT: What is the relevance of this question?

MR. ROSENTHAL: The relevancy of the question is, it is my recollection that her standards were taken and I want to know if they were submitted to this expert.

THE COURT: Where did you secure this recollection, from where? Is there any evidence in the record?

MR. ROSENTHAL: I might be confused between what was in the record and what was elsewhere, your Honor.

THE COURT: I think it may make a difference.

MR. SOENTHAL: As I say, it may be. I won't make the representation because I am not certain.

THE COURT: Do you know, Mr. Silverman?

MR. SILVERMAN: It did not come out of direct, your Honor, I don't know if it came out on cross.

THE COURT: Well, if there is any uncertainty -- were you given any samples of an Anne Altro's handwriting?

THE WITNESS: No, sir, I wasn't.

THE COURT: Okay.

Q Now, sir, when you received this mass of documents, did you come to New York to receive them or were

they sent to you in Washington, D. C.?

A These documents were, as I recall, delivered to me in Washington, D. C.

Q In Washington?

A Yes, sir.

Q And was there a covering letter sending them to you?

A I believe there was, sir.

Q And did you speak with anybody at the time you received them?

A Yes, I did.

Q And with whom was that?

A I am not posibive about this name but I think it was Mr. Walter Ayres.

Q The special agent of the Internal Revenue Service, is that right?

A Yes, sir.

Q Incidentally, does the Internal Revenue Service have any office or any persons that do work similar to yours?

MR. SILVERMAN: Objection, your Honor.

THE COURT: On relevance?

MR. SILVERMAN: Yes, your Honor.

THE COURT: What is relevant about that, Mr. Rosenthal?

MR. ROSENTHAL: Well, I'd like to ask it subject to connection, your Honor.

I have another question I intend to ask this man immediately thereafter.

THE COURT: No, you may ask it after I see the connection. I can't foresee it now.

Q Am I correct, sir, that the Internal Revenue Service is or at least was back in 1973 a branch of the United States Treasury Department?

MR. SILVERMAN: Objection, your Honor; what relevancy does it have?

THE COURT: The answer is yes. I will take judicial notice of that.

Q And when Mr. Ayres hand-delivered the documents to you, sir, did he tell you anything about the background of the case?

A He may have. I really don't recall.

Q Did he tell you what he hoped to establish through your examination?

A Yes, sir.

Q And did he tell you whose signature he hoped to establish might have been similar or comparable to the endorsements appearing on the questioned checks?

A No, sir.

Q Did he tell you, sir, that prior to coming to Washington, D. C. that either the Internal Revenue Service or the United States Attorney's Office had submitted all of this material to a handwriting expert then in the employ of the U. S. Treasury Department?

A I can't state for certain, sir, whether that came up in conversation. I really can't.

Q Well, if it came up in conversation, wouldn't you be interested in seeing the reports of that handwriting or questioned-document expert?

A Not really, not necessarily, if I was conducting an independent examination, I would not want to be influenced any way.

MR. SILVERMAN: Your Honor--

THE COURT: Let him finish his answer.

MR. ROSENTHAL: I thought he was finished.

THE COURT: He was approaching the end.

Q Have you finished, Mr. Oberg?

A Yes.

Q I think quite properly you would not want to be influenced by the opinion of somebody else?

A That's correct.

Q Having once conducted your examination and having once formed an opinion, wouldn't you be interested, sir, in

seeing how your opinion stacks up agains the opinion of somebody else?

A Not necessarily.

Q I am not asking you not necessarily. I am asking you in this case, sir.

A No, sir.

Q In other words, I am going to ask you a personal question.

Now, have you ever gone to the races?

A No, sir, I have not.

Q Well, do you have any friends that you have ever seen handicapping horses, attempting to pick horses?

A I really --

MR. SILVERMAN: Your Honor--

THE COURT: Sustained.

Q Have you ever done crossword puzzles?

A Occasionally.

MR. SILVERMAN: Objection.

If the lawyer gets up, don't answer.

Sustained.

Q Have you ever compared your results in respect to questioned documents with the opinion or opinions of any other alleged experts?

MR. SILVERMAN: Objection, your Honor.

THE COURT: I will allow that.

A No, sir, I haven't.

Q Not at any time?

A No, sir, I have never had the opportunity to compare.

Q In other words, usually when anything came to you it was virgin material?

A So far as I know.

Q So far as you know?

A Yes, sir.

Q And as you sit there now, do you remember whether or not you had been told that this material had been submitted to someone else?

A I don't know whether I was told or how I got it but I did have the inference that it had been.

Q When did you have that inference?

A I don't know whether it was prior to or subsequent to the receipt of this evidence. I don't recall.

Q Well, it was prior to what?

A Or subsequent to the receipt of the evidence.

Q I see.

MR. SILVERMAN: Your Honor, at this time I would like to have an offer of proof as to this line of questioning.

THE COURT: All right, come to the side bar, please.

(At the side bar.)

MR. ROSENTHAL: Your Honor, as a result of I think considerable prodding on my part, Mr. Silverman checked and rechecked and I received this shortly after the date appearing thereon.

(Letter handed to the Court.)

MR. ROSENTHAL: I think a copy was sent to your Honor although with the number of matters before the Court it may not have reached your attention.

THE COURT: Yes. Do you plan to call Mr. Caputo?

MR. ROSENTHAL: Do I plan to call him?

THE COURT: Yes.

MR. ROSENTHAL: I don't know.

THE COURT: What is your offer of proof that Mr. Silverman asked for? What is the purpose of following this line?

MR. ROSENTHAL: My offer of proof is that Mr. Caputo made an examination back in January 1972 and found or formed the opinion that the only one instance-- and see, this is weasel-worded, because I asked Mr. Silverman -- it would appear from reading that only Thomas Tuccella's checks were submitted to Caputo.

MR. SILVERMAN: I made it know.

THE COURT: What is your offer of proof?

MR. ROSENTHAL: My offer of proof is that another expert in government employ did not have the same findings as this gentleman.

THE COURT: I certainly won't allow it in this way. You may subpoena him.

MR. ROSENTHAL: And dissatisfied with that, the government went seeking another expert.

THE COURT: You may subpoena Mr. Caputo to show that. I am not going to let you use an ambiguous document that this man says he never saw and ask the jury to draw that inference.

Is. Mr. Caputo still alive and well?

MR. SILVERMAN: On there his number is where he is and he is alive and well.

THE COURT: He may be brought here if you want to show any inconsistency.

MR. ROSENTHAL: It is not my recollection that this witness said that he had never seen this report. It is my recollection that he said that he had not looked at it prior to conducting his examination.

THE COURT: He said he never saw it. He doesn't know when he heard of the other examination. You may try

to elicit whet he knows of any other report, any other report and what it says, and if the answer is no, you must stop there.

MR. ROSENTHAL: All right.

MR. BRILL: Could I just clarify the record in one minor respect?

The transmission of the questioned and photostatic copies of the questioned documents and the standards was by letter dated September 17th, which I received in my office, and my office received on September 19th.

He does, on the third page, refer to handwriting sample dated April 30, 1971, given by George Denti, four pages.

Actually, we got three pages and I acknowledge that I did not pursue that.

THE COURT: I don't see any profit in our digging oursevles further into this whole. If he said he sent you four pages and his letter says four pages and you only got three--

MR. BRILL: It is my fault.

THE COURT: -- one knows you well enough, you would have asked for the other one if you were paying attention.

MR. BRILL: I didn't.

THE COURT: All right. Fine.

MR. BRILL: I just wanted it clear that notwithstanding that I only received three and I don't think he will say otherwise.

THE COURT: Of course he won't say otherwise and let's establish on the same record that the fault for your receiving only three in ample time is yours.

MR. BRILL: I acknowledge I am not perfect. That's all that means.

(In open court.)

BY MR. ROSENTHAL:

Q Mr. Oberg, are you aware of the fact that another report, a report other than yours, was submitted to the United States Attorney's office in connection with the material that you examined?

A No, sir, I am not aware of that.

Q No one ever told you that?

THE COURT: You understand, ladies and gentlemen, that if a question says "Are you aware of the fact that the sun is out tonight" and the answer is "No", you would not accept that as a fact, because the question is not evidence, nor do we phrase questions in that fashion.

MR. ROSENTHAL: But, if your Honor please, I think it is only fair that the jury be advised that I did not ask that question out of left field --

THE COURT: Of course not. Lawyers are not allowed to ask irresponsible questions, and if they do it is my job to reprimand them.

The fact remains that although a lawyer thinks he may have a basisfor asking a question, a question is not evidence; it is only answers that are evidence.

There may or may not be in fact other reports,

but until or unless you get evidence of that you do not have any evidence of that.

Go ahead, Mr. Rosenthal.

BY MR. ROSENTHAL:

Q Mr. Oberg, have you ever heard of a Luciano v. Caputo as a questioned document expert?

THE COURT: Mr. Rosenthal, I ruled that in the event there was a certain answer to the last question you put we were going to drop that line, and under that ruling I am directing you to drop that.

MR. ROSENTHAL: I merely wanted to see if he knew the person that I referred to.

THE COURT: I have ruled on that.

MR. ROSENTHAL: And I will go further --

THE COURT: You are not even going that far.

MR. ROSENTHAL: Well, if there is a roadblock I will not.

Q Now, sir, wouldyou come over here, Mr. Oberg -- oh, wait, before you do, sir. Are you a member of any societies or associations or institutions concerning your specialty as an identifier of questioned documents?

A I am a member of the American Academy of Forensic Sciences.

Q And that means -- what is the American Academy

of Forensic Sciences composed of -- what is its membership?

A What is its membership?

Q Yes.

A I don't know the total membership.

Q No, but I meant the type?

A Oh!

Q I do not mean each man but the basis of membership in that society.

A Well, the basis for membership is an interest in the scientific development of information or evidence which would have a legal bearing.

Q And also the ability to transmit that to the general public from the witness stand --

A That is correct.

Q -- is that correct?

A Yes, sir.

Q So that would it be fair to say, sir -- and I am not saying this in a denigrating way at all -- would it be fair to say that you might be described as a professional witness?

A That would be unfair, sir.

Q Unfair?

A Yes, sir.

Q Now getting back to the writing here, would you

come down, please?

(Witness leaves the stand and goes over to the easel.)

Q I thik you told us that you based your conclusions on the first John Aurrichio which appears on the left side. Does it have a number?

A The check number is 6653.

Q No, but does it have an exhibit number?

A 150.

Q And that you based that conclusion upon the J, among other things -- capital J in "John"?

A Yes, sir.

Q And what was that about?

A Well, the fact that the top loop of the J was accidentally reversed to normal fashion, whereas it is normally drawn from right to left to form the loop, in a clockwise formation. This was done in a counterclockwise formation.

Q Do you know, sir, that there are many people who write that way with reverse loops?

A From my experience and examination of all the documents I examined, this is not too kind a usual method -- too common a method.

Q But it does exist in more than one person, doesn't

it?

A Oh, yes, sir.

Q And it does exist in many people?

A In some people.

Q In fact, sir, styles of writing frequently occur as a result of background, do they not?

A To some extent, yes, sir.

Q Early training at home?

A Right, the fact that they try to copy other people's writing if they see something they like.

Q And going to school?

A And going to school.

Q And at one time they did attempt to teach penmanship -- I don't know if they do anymore; I think now they teach printing -- I am not certain -- isn't that true?

A Yes, sir.

Q And people with the same ethnic background and people coming from the same school surroundings might very well have similarities in their handwriting?

A I don't know if the ethnic background would have any application to that or not.

Q Well, if parents were attempting to teach a pre-school child to write, don't you think that background might have something to do with it?

A If parents did.

Q Yes, so that those things do appear in the handwriting of many, many people -- similarities as a result of similar background, similar schooling and similar exposure; isn't that true, sir?

A What things, sir?

Q Similarities in handwriting, sir.

A Well, the fact that there is a general formation of a letter of not exactly the same structure, yes.

Q All right. Now am I correct, sir, that sometimes or many times during a person's lifetime they might change the fomration or the type of their structure of letters?

A That's true but there is a gradual change -- as one person writes he may develop a slight handicap or lose muscular control or they may see something in another person's writing which they would like to adopt to theirs, and also over the years, of course a person's writing is subject to some change.

Q And also the conditions under which any particular handwriting was done might cause a change in the appearance, might it not?

A To some extent, yes, sir.

Q In other words, if a person is seated comfortably at his or her desk, in an office or at home and with no

problems, and with no immediate pressing thing involving him or her, might not his handwriting differ from the handwriting that he or she would perform under pressure?

A Yes, sir, it could be.

Q And under strange circumstances?

A That could be, sir.

Q Or in strange places?

A I wouldn't go so far as to say strange places would have too much effect.

Q Now, sir, do you know underwhat conditions the exemplar appearing in 146-A was furnished by George Denti?

A No, sir, but I would imagine that there was some strain or pressure.

Q You would imagine that?

A Yes.

Q And it shows in that, does it not?

A Yes, sir.

Q And you don't know as you stand there now and as you look at that, you don't know whether he was standing or seated, do you?

A No, sir.

Q You don't know whether he was writing with his own pen or with a pen that was furnished by somebody else?

A No, sir.

Q And you don't know whether or not he had in front of him the checks with the endorsements appearing thereon?

A I don't know.

Q Now, really, the only thing -- not the only thing, but the thing that is most outstanding about the John Aurrichio appearing on the two checks is the J and the reverse loop, is that correct?

A No, sir, I didn't take anything -- I didn't give it any special weight; I considered the combination of all of these characteristics.

Q Don't you think that the capital and the fact that there is a reverse loop in the J is entitled to weight?

A Yes, sir, as much weight as the other characteristics.

Q And no more?

A No, sir.

Q Well, the rest of the handwriting is rather ordinary?

A Well, I don't know what you mean by ordinary.

Q Now, sir, let's get down to cases. You called attention to the N, the tail and the like?

A Yes.

Q That is what is commonly called a terminal letter, is it not?

A Yes.

Q Is it not so that in your particular field or science, if you will, that terminal letters are considered to have little or no import?

A Not in my opinion.

Q Not in your opinion?

A No.

Q Well, in the opinion of others in your field do you know whether that is true?

A You would have to ask them. I couldn't state for them.

Q Don't you read the writings of other handwriting experts?

A Well, I have never read a statement like that.

Q Dod you attend any forums or lectures?

A Yes.

Q In fact, I think you told us that in the early part you took a course at the FBI, is that correct, sir?

A Yes, sir.

Q And one of your teachers was Mr. Osborn?

A No, sir.

Q Well, was his book used in connection with a course?

A Yes, sir.

Q And which Mr. Osborn was that, do you recall?

A I believe it was Mr. Albert Osborn.

Q Now, I think there were two Alberts, an Albert S. and an Albert D. Do you remember which one it was?

A No,sir, I don't recall.

Q Now, sir, you said the A was similar to, and you

pointed to one A in this exemplar, is that right?

A Yes, sir, one A in this exemplar.

Q The third line?

A On the third line.

Q Right.

A And other letters A on exemplar or Exhibit 149-A.

Q In the Allerton Avenue, is that right?

A Yes, and the abbreviation.

Q And what about the A in Anthony?

A That is entirely different.

Q That is entirely different?

A That is correct.

Q And it is very different, isn't it?

A Yes, sir.

Q It is even different from any of the A's in Exhibit 146-A?

A No, it is similar to the exhibit, capital letters A in the name Aurrichio on 146-A.

Q Now is it, sir? Look at the A in Anthony Ferrotta.

That is just a straight line across an inverted triangle, is it not?

A It is similar in the respect that it actually goes down first and up to the point or the peak of the

letter, and then down to the base of the letter.

Q Right.

A These do the same (indicating).

Q But they have a connection with the next letter, don't they?

A With the exception of this one, sir, which does not have that (indicating).

Q Then you have that compensated by the U coming down into the base?

A Yes,but thisis supposed to be considered script writing whereas the Anthony Ferrotta signature is for the most part hand printed. The N is a hand printed letter N.

Q But you said you used it. The "Avenue" here is script writing, isn't it?

A That is correct.

Q And Catenzaro is script writing, isn't it?

A Yes, sir.

Q And then you have Thomas Tuccella with hand-printing?

A That is correct. That I didn't use, the hand printing.

Q So that you do have a great variance in one person's writing at one particular instance?

A Depending on whether we are referring to hand printing or handwriting. Hand printing is not comparable to handwriting. We do not make that comparison.

Q I understand that. But you have a person, George Denti, who wrote this - it says 4/30/70. He printed the first name; he wrote the second name; he printed the third, is that right?

A Well, that is kind of a mixture of printing and --

Q And handwriting?

A Yes.

Q And the same is true with respect to the address of Thomas Tuccella. You have "Jamaica, New York" appearing as printing rather than handwriting, isn't that so?

A Yes, sir.

Q Yet with "Catenzaro" you have "Allerton Avenue," and it would appear to be entirely in script, is that right?

A Yes.

Q And in "Bronx, New York," with script?

A Except for the abbreviation of New York.

Q And the same is true with "Anthony Ferrotta." You have the "Bronx" in script?

A Yes.

Q You have the"Halsey Avenue" in script?

A Yes.

Q So that you have great variance right within that one exhibit?

A In the manner which it was prepared, handprinted and handwritten.

Q Yes, there is no question about that.

A That is correct.

Q Wouldn't that reveal to you as an expert that the person who prepared that is not a person who writes practically identically each and every time?

A Well, no person will write identically each and every time so that you can superimpose one writing over the other. That is true.

Q I appreciate that --

A There is that normal variance, but in this particular instance this person reverted to the hand printing in the upper portion; in the middle portion he resorted to handwriting, and then a mixture of both in the lower portion.

Now, as I stated before, hand printing is not comparable with handwriting. You don't make that comparison between handwriting and hand printing.

Q I appreciate that. I am not attempting to ask you that, sir. However, the "Michael Catenzaro" was complete

handwriting, wasn't it?

A Yes.

Q And you had checks submitted to you with the name "Michael Catenzaro" enodrsed thereon, didn'tyou?

A Yes.

Q And you didn't identify any of those that were submitted to you as being comparable to the exemplars submitted to you?

A I did not identify the Michael Catenzaro endorsement as having been prepared by the writer of Government's Exhibit 146-A.

Q And 147-A?

A Or 149-A.

Q 149-A?

A That is correct.

Q Where you have a handwritten "Michael Catenzaro", is that correct?

A That is correct.

Q Now, sir, getting back to "Aurrichio," you say that you took the A from one out of ten exemplars appearing on 146-A, is that correct?

A Yes, sir.

Q Plus -- I am not leaving it out -- don't worry -- plus A in Allerton and the A in Avenue, is that right?

A The two avenues.

Q The two avenues?

A And in the word -- in Exhibit 147-A the person made a script A and then went over it with one of these more or less combinations of script and hand printing.

Q Now, sir --

THE COURT: Mr. Rosenthal, if you are pursuing a line, continue. When you find a breaking point let's stop for lunch.

MR. ROSENTHAL: It is certainly agreeable to stop now, Judge.

THE COURT: All right, let's take lunch and come back at 2:15, ladies and gentlemen.

MR. SILVERMAN: Your Honor, until what time will we be sitting this afternoon?

THE COURT: 3:15.

(Jurors left courtroom.)

THE COURT: Gentlemen, let me remind you to look at the note from alternate juror No. 1 and give me your views. Let's come back two or three minutes before 2:15 and I will collect the concensus and then I will do something or other about it.

MR. BRILL: My view is in accord with your Honor's.

MR. SILVERMAN: I have read the note and I have

no objection.

MR. ROSENTHAL: Whatever your Honor sees fit.

THE COURT: What I had said is that I think we ought not at this point excuse people lightly, and we ought to have affidavits. If that is agreeable with you I will so direct Mr. Cutner.

MR. SILVERMAN: Also the note indicates an indication he would not be able to sit beyond February 18th.

THE COURT: That we have been through. I told you he had this problem with his business, he and Mr. Scher, and I spoke to both of them, and the 18th is actually, in my judgment, no sweat for him. He is a man who very much needs to be available for certain phone calls on Monday morning, and fortunately for him next Monday is a holiday, so he has no problem.

All right, I will see you at 2:15.

(Luncheon recess.)

AFTERNOON SESSION

2:15 p.m.

(In open court, jury not present.)

MR. BRILL: Your Honor, the records required to be produced pursuant to the subpoena have been produced and furnished to Mr. Silverman in accordance with his request with some modifications that he suggested and we have turned those over.

THE COURT: Good.

MR. SILVERMAN: That was right now, your Honor.

THE COURT: Fine.

(Jury present.)

W I L L I A M S. O B E R G, resumed:

CROSS-EXAMINATION (continued)

BY MR. ROSENTHAL:

Q Now, Mr. Oberg, am I correct in assuming that you do not say that in your opinion each and every one of the examplars furnished you are identical copies of each other?

A That is correct.

Q There are distinctions and dissimilarities, are there not?

A Well, there are different names on each and in the case of the one document, part of it is handprinted and part of it is handwritten.

Q No, but, forget that. I am talking -- just look at this first one here, the John -- if you lay one, the top one over the fourth one, there would be some differences, would there not?

A Yes, sir.

Q And that's tre of almost anybody's handwriting, is it not?

A That's correct.

Q The individual isn't a machine and doesn't produce the same target every time he or she writes?

A That's correct.

Q Now, sir, you have said that the top two John Aurrichios are based upon the J's appearing in the exemplar here, is that correct, sir?

A In part, yes, sir.

Q In part. All right, and one of the features is what you have described-- I don't know if you called it that, but what is known in the trade, in the handwriting expert field, as a reverse loop.

I think you called it what, a counterclockwise or clockwise?

A I said it was prepared in a counterclockwise.

Q Counterclockwise.

And isn't it another thing that would be used by

an expert in determining similarity, an expert in determining similarity, is the fullness of the loop?

A Yes, that's correct.

Q Now, I call your attention to all of these appearing in 146A and you have an open loop at the top, do you not?

A Yes, sir.

Q And I call your attention to the second signature on Government's Exhibit 150 and you have a closed loop, is that not true?

A Almost closed.

Q Almost closed?

A Yes.

Q Well, from this photograph it would appear to be entirely closed. I don't know what the original shows, but to my weak eyes, that appears to be a closed loop.

A If it were completely closed, sir, you would have a retrace over the initial stroke which you don't have.

Q I see.

Now in 146A -- I will withdraw that for one moment.

This straight line down you call the staff, don't you?

A Yes.

Q In the J?

A Yes, sir.

Q And in 146A, with very little variance, you have a straight staff, do you not?

A Well, yes, I would say the apex of the letter is straight.

Q Right. Now, sir, on the second signature appearing on 150, is that staff horizontal?

A No, sir, it is straight but it is not a horizontal angle.

Q It is not horizontal. It angles over to the left, does it not?

A Yes, sir.

Q And you don't find that in 146A at all, do you, sir?

A Well, there is some slight angling off, yes, sir.

Q But not to the distortion that appears there?

A No, sir, not that I see.

Q Now, sir, getting down to the Thomas Tuccella and Lazravitch -- on the a's here and on the f's and in connection with Anthony Ferrotta in Exhibit 147A and on the a's and the l's, also appearing on 147A, you have embellishments, don't you?

A Yes, sir.

Q In the capital letters?

A Yes, sir.

Q And is that unusual?

A Well, it probably isn't unusual to this particular individual's writing, no.

Q And you have seen many samples of writing where individuals use embellishments?

A I don't agree with the word "many," because we don't see them to that great extent, we see them on occasion.

Q And would that be one of the reasons why you have identified the two Lazravitch signatures appearing on 150 as being made by the person who made the exemplar 147A?

A That is one of the combination of characteristics, yes.

Q That is one of the characteristics. And that is a strong characteristic, isn't it, sir?

A It is as strong as the rest of them, yes, sir.

Q And perhaps a bit stronger because I think you have just told us, didn't you, because you have seen them on occasion but not with great frequency?

A That is correct.

Q Now that embellishment, if I may use that term, and I don't know if that is the term you would use, that

embellishment lends itself to the letter f, to the letter l, to the letter t, does it not?

A Yes, sir.

Q And also to the letter s, would it not?

A Well, I don't recall seeing any letter s.

Q There is none here, but if a person who is used to writing with that embellishment, the letter s could also have that embellishment, couldn't it?

A I wouldn't make that statement until I actually saw this. It is jut not a generalization I could make.

Q I see. And as you sit there now do you recall ever seeing any s's with that embellishment?

A Well, I don't know how it would look with that embellishment, sir.

I don't know how you include that embellishment in the letter s, what portion of it you are speaking of.

MR. ROSENTHAL: May I have these marked for identification as one exhibit.

(Defendan't Sexhibits AM, AM-1, AM-2 marked for identification.)

BY MR. ROSENTHAL:

Q Now I show you, sir, Defendants' Exhibit AM-1 for identification and call your attention to the signature or endorsement appearing thereon (handing).

(The witness examines.)

Q I represent to you, sir, that that is twice the natural size of the signature that it is a photograph of.

MR. SILVERMAN: Objection, your Honor.

THE COURT: Sustained. Don't represent facts unless it is stipulated.

MR. ROSENTHAL: I will withdraw that.

THE COURT: You may disregard that, ladies and gentlemen.

Q I show you Exhibit AM-2 and call your attention to the reverse side of it (handing).

(The witness examines.)

Q Looking at AM-1 and AM-2, does AM-1 appear to be an enlargement of the endorsement that appears on AM-2?

A Yes, it does.

Q All right, sir. Now looking at either or both of them do you notice the "S" in "Santo"?

(The witness examines.)

Q Does that have any embellishment on it?

A Yes, it does.

Q And is that embellishment on it similar to the embellishments that appear on "Lazravitch"?

MR. SILVERMAN: Objection, your Honor. What is the relevance of these two documents to this document?

THE COURT: What is the relevance to that?

MR. ROSENTHAL: The relevancy, your Honor, is to show the fact that this is a common situation.

THE COURT: Objection sustained.

MR. ROSENTHAL: And also to test the credibility of this witness.

THE COURT: No.

MR. ROSENTHAL: I respectfully except.

THE COURT: If you can lay some better foundation than that, by showing him the original handwriting.

MR. ROSENTHAL: All right, I will lay a better foundation.

I offer in evidence Defendants' Exhibit AM (handing).

MR. SILVERMAN: I object to the offer, your Honor, as totally irrelevant to any matters before the Court.

THE COURT: Let me see it.

(Handed to the Court.)

THE COURT: No, it is excluded.

MR. ROSENTHAL: I respectfully except, and may I note in the record what the particular --

THE COURT: The exhibit will be before anybody whoever wants to see what we are talking about. That is why it is identified.

MR. ROSENTHAL: These slips have a habit of coming off, and that is why I wanted the record to disclose what I was offering.

THE COURT: You may do that in the absence of the jury.

MR. ROSENTHAL: I did not want to do it in the presence of the jury but I wanted the record to reflect the three documents that I have offered for the purpose of cross examining this witness.

THE COURT: Well, it is not commonly done, and I have not had any experience that the Appellate Court has had any difficulty of that nature you have described, but having it in mind that your experience may differ from mine you will surely have an opportunity to describe to your heart's content any exhibit that is part of this record or that has been offered as part of this record at any time.

Now proceed.

MR. ROSENTHAL: Yes.

May I have these marked as Defendants' Exhibits.

(Documents marked as Defendants' Exhibits AN and AN-1 for identification.)

BY MR. ROSENTHAL:

Q Now I show you Defendants' Exhibits AN and AN-1 for identification (handing), and I ask you to examine them.

(Witness examines.)

Q Have you, sir?

A Yes.

Q Now the "T" that appears in that exhibit, is that --

THE COURT: Those are not in evidence, are they?

MR. ROSENTHAL: The original of that is in evidence, your Honor.

THE COURT: I think so.

MR. ROSENTHAL: If there is any question about it --

THE COURT: No; these have not been offered in evidence.

MR. ROSENTHAL: No, I have not offered these in evidence, your Honor, but the original is in evidence.

BY MR.ROSENTHAL:

Q Will you look at those exhibits , please, sir?

A Yes.

Q Does the "T" in that exhibit have the embellishment that we have been describing or discussing that appears in 148-A under "Tuccillo"; in 147-A in respect to the name"Ferrotta", and in respect to the name "Lazravitch"?

MR.SILVERMAN: Your Honor, which exhibit are we referring to now that is in evidence?

THE COURT: I think you should show him the thing that is in evidence.

MR. ROSENTHAL: Certainly.

THE COURT: Because I think he is allowed to talk about something in evidence and not about something that is not in evidence.

MR. ROSENTHAL: As Defendants' Exhibit L in evidence, if the Court please.

THE COURT: Why don't you show him that?

BY MR. ROSENTHAL:

Q If you will look at the endorsement appearing on Defendants' Exhibit L in evidence, are those photographs fair representations of that endorsement?

A (After examining) No, sir, it is entirely different.

Q What?

A It is entirely different. This is a name --

Q Maybe I gave you the wrong one.

(Witness hands to Mr. Rosenthal.)

Q I did -- I am sorry; I am glad you called it to my attention.

Look at Defendants' Exhibit K in evidence (handing).

(The witness examines.)

Q Are those photographs fair representations of the endorsements that appear on Exhibit K?

A Yes, sir. I do see one additional marking on the original that does not appear on the photographs.

Q What is that additional marking, sir?

A I really don't know the significance of it, but it is there (indicating).

Q It looks like an ink mark somewhere separated and not connected with the signature, is that right?

A That is right.

Q And has nothing really to do with the endorsement or signature, does it?

A So far as I can see, none.

Q Right.

Now look at the original which is Defendants' Exhibit K in evidence, and Defendants' Exhibit AN and AN-1 for identification, is not the embellishment appearing

upon the "T" there similar to the embellishment appearing on the "F" and the "L" in 147-A, the L's and the F -- the "T", rather, in Exhibit 150, and the "T's" in 148?

A In answer to your question, and truthfully --

Q I hope it is "truthfully".

A -- I see only a very slight similarity but there is a great deal of variance.

Q I see; only a slight similarity?

A Yes, sir.

Q Now, sir, particularly in respect to Lazravitch, isn't there a similarity in that the letter -- the first letter, F -- the capital, is connected with a capital?

MR. SILVERMAN: Objection, your Honor. We are comparing apples and oranges at this time. If I see that check correctly, the endorsement is B&C Trucking. Lazravitch does not contain the initial letter "T". It is an L.

Q Are you referring to the embellishments that appear upon the L's and the T's and the F's?

THE COURT: I will allow it. The jury will decide what significance it has, if any.

You may answer.

A Well, that was going to be my answer, that the succeeding letter following the T in the word "trucking",

Exhibit A, is an "r", or as in "Lazravitch" it is a "a".

Q It is a different letter.

A That is correct; and the fact that the"T" actually is not comparable with the letter "L", as you just compared them -- different letters.

Q I am sorry, I did not mean to stop you.

A You cannot compare different letters, and, as I stated earlier, there is a general similarity but there are a number of differences which are really outstanding so far as I can see.

Q All right, sir. Compare the "T" with the "T" in "Tuccella" which appears in --

MR. ROSENTHAL: What is that --

MR. SILVERMAN: 150.

Q -- 150, the last signature here (indicating) -- isn't that "T" similar to that?

A Yes, sir, in this respect, that it is -- it has a slight general formation but in many parts of the "T" -- for instance, the upper portion, it doesn't have the straight horizontal line which is the initial part of the "T". This does not have as large a loop formation in the upper right portion, and the bottom portion of this "T", where as in "Tuccella" it is angular or loop formation, and in the loop formation in "T" on Exhibit K is much

smaller than in the bottom portion of the letter "T" in "Thomas" or "Tuccella", and it also has a curve -- a kind of S-curve formation in it which does not appear in the "Thomas" or the "Tuccella T"

Q All right, sir. Were you as careful and as particular in diagnosing and making your memorandum in respect to Exhibit 148-A which bears "Thomas Tuccella", and in respect to Exhibit 150 which bears "Tuccella"?

A Yes, sir, I was.

Q All right, let us see if you were, sir.

On this (indicating), you have a single line forming a loop at the very top, do you not, sir?

A Yes, sir.

Q Now starting with the first line on 148-A, you have a double line forming the loop, do you not?

A Well, that is an accidental stroke in my opinion.

Q Accidental stroke.

On the second line don't you again have a double loop, or is that another accident?

A That one is connected -- it is not really a double loop. It is a line to the left followed by a line to the --

Q Sir, do you have the original --

MR. ROSENTHAL: Does he have the original

of this exhibit which his Honor said is much better for a person to work from?

MR. SILVERMAN: Of this exhibit?

MR. ROSENTHAL: Of this Exhibit 148 -- with those particular photographs.

THE COURT: His Honor did not say that.

MR. ROSENTHAL: Well, I understood you --

THE COURT: His Honor said he is not going to allow witnesses to testify about things that are not in evidence --

MR. ROSENTHAL: True.

THE COURT: When that was put in evidence we allowed testimony about it, and anything else you put in evidence -- photograph, sketch, painting, drawing I will similarly allow to be testified to.

MR. ROSENTHAL: But my recollection, your Honor -- I don't want to engage in a duel of words --

THE COURT: Well, don't force yourself. I am just telling you that is my ruling.

Now proceed.

MR. ROSENTHAL: Thank you.

(Mr. Silverman hands.)

Q Now, sir, I call your attention to the second line of the original, of 140 --

MR. ROSENTHAL: Is that correct?

MR. SILVERMAN: 148, rather.

Q 148. Doesn't that have a double loop?

A By a "double loop" I assume that there are complete loops. However, I do not see a complete loop here. It is merely a line drawn off to the left, followed by the line turning sharply and coming back to the right.

Q All right. The line starts going to the left.

A Right.

Q Isn't there a space between that line and the line going back to the right?

A Yes.

Q So that creates a loop, does it not, sir?

A Not unless, of course, the lines cross.

Q You have a loop on the left side of what I think we would call the staff, and you have a loop on the right side of it, don't you?

A No, sir. You have it on the right side but unless the two lines on the left cross you don't have a loop.

Q Well, is there space between them?

A Yes.

Q And would it appear to the uneducated eye as a loop?

MR. SILVERMAN: Objection, your Honor.

THE COURT: Sustained.

Q All right. Now let us go to the third line. That is dissimilar from the first line, is it not, the "T"?

A Dissimilar?

Q Yes.

A The third line is dissimilar from the first line?

Q Yes.

A In that accidental stroke formation, yes.

Q And the accidental stroke.

A Which is on the first one.

Q And is it also dissimilar to the second line?

A No, it is not dissimilar.

Q All right, let us see if it is or not.

Coming down to the bottom of it, does it have a loop?

A Yes, it has a small loop.

Q And on the second line it is a single stroke going back, is it not?

A Well, it is a retrace, so you could call it a closed loop formation.

Q A closed loop formation?

A Yes, and what I spoke of as a variance, a person doesn't make a signature twice in exactly and precisely the same manner.

Q Now we go to the fourth line, comparing it to the top, sir, you have definitely a double loop there, don't you, on the fourth line?

A Well, you can call it that, if you like, but again I still say it is merely a line drawn to the left followed by a very sharp angular turn, then forming the loop.

Q Let's not quibble.

Are you calling this -- and I am pointing to the very top of the letter capital T, do you call that a loop?

A Yes, sir.

Q And immediately below it and to the left, there is a space between lines, is there not?

A Yes.

Q And you tell us, as you sit there now, that you don't call that a loop?

A That is not my definition of it.

Q All right, what do you call it?

A I really call it a change in the angle of writing.

Q A change in the angle of writing?

A In order to have a loop I assume that the lines must cross, leaving an open space between them. They don't cross.

Q Do they create a space similar to the space, to the upper portion to the right?

A What is that?

Q I didn't hear you sir.

A I didn't hear the question.

Q All right. Whether the lines cross or not, or whether it is an accident or not, does the formation of that letter create two spaces between lines?

A Yes, sir, it does.

Q Do you have that at all in Exhibit 150?

A Well, there is a short line to the left followed by an angle and a return to the right in the T forming the word "Thomas".

Q I ask you, sir, do youhave it at all where there are lines enclosing spaces both to the leftand to the right of the top of the T in Tuccella in 150?

A No, sir, but in the --

Q That is all I asked you, sir; I am sure Mr. Silverman will bring out anything that you think should be brought out.

Now let's start with line 5: Here you have a beginning of the stroke way up near the top, don't you, sir?

A Yes, sir.

MR. SILVERMAN: Your Honor, I am going to object at this time. We are going through the handwriting in one exhibit. He has already testified that people do not sign their handwriting the same way each time. This is the same document, your Honor. If there is any contention that different people signed each one of those lines, that would be relevant, but I would consider it irrelevant if the same person signed each one of these signatures. He has already testified that people sign different ways.

THE COURT: It appears to be undisputed that the same person wrote it.

MR. ROSENTHAL: No question about it.

THE COURT: That doesn't make it irrelevant. I will allow it.

BY MR. ROSENTHAL:

Q Now, starting with line 5, sir, in the T in Tuccella, you have what amount to -- I don't know what

technical term you would give it -- but either a curve or a hook to the left of the staff, don't you?

A Yes, sir.

Q That does not appear in any of the first four lines, does it,sir?

A No, sir.

Q And it does not appear in 150, does it, sir?

A No, sir.

Q Coming down to the sixth line, you have a modification of that curve to the left of the staff, don't you?

A Yes, sir.

Q It is similar but it is not as great as the one that appears in the fifth line?

A That is correct.

Q Is that right?

A Yes.

Q And now we get to the seventh lines, and we have an embellishment of some sort -- I don't know what you would call it; I call it a loop, but you said it isn't a loop, or maybe it is in this instance -- to the left of the staff, is that right, sir?

A That is right, sir.

Q And that is not at all similar to what appears

to the left of the staff on 150, is it?

A No, sir.

Q And now we come to No. 7, I believe, and again here we have a reverse loop, don't we?

A Well, the line starts to the right, angles back to the left, and then angles back to the right and then forms a loop formation.

Q And that is not -- well, it might be in the top one, might it not?

A Well, sir, again that is an accidental stroke up there. It is a single line drawn across.

Q And is this an accidental stroke also (indicating)?

A I beg your pardon?

Q Is this also an accidental stroke?

A No, I think that was probably put there intentionally.

Q Sir, does that at all compare to this (indicating)?

A No, sir.

Q And then we come to the 9th line, and we have a -- I don't know whether you would call it a curlicue or what, but we have a gizmo up at the top there, don't we?

A Yes.

Q And what appear to be double loops, one on the

left side and one on the right side, is that right?

A Yes, sir.

Q And does that, sir -- that might be somewhat similar to line 4, might it not?

A Somewhat.

Q But it is not at all similar to line 5 on Exhibit 150, is it?

A The top is not, sir.

Q What?

A I said the top is not.

Q And we get to 10, which is the last one appearing on 148-A, and again we have something very similar to line 4, don't we? It apparently started to the right of the staff, and you have a reverse loop, and then a loop up at the top?

A Yes, sir.

Q And again, sir, is that at all similar to the T in Tuccella in Exhibit 150?

A You are referring -- when you say is the T similar, you see, the top --

Q The top of the T?

A In some respects it is similar as the loop on the right.

Q But 150 has a loop on the right with a single

stroke to the left of the staff, doesn't it?

A Yes, sir.

Q This has a loop on the right and a loop on the left, doesn't it?

A If you like, yes, sir.

Q I like to call it a loop, may I?

A Yes, sir.

Q Thank you.

Now, sir, in 150 the terminal letter in Tuccella is connected with the L, is it not?

A Yes, sir.

Q In at least two instances in 148 the terminal letter is not connected, is that correct?

A Yes, sir.

Q I think it is lines 6 and 7, is that right?

A That is correct.

Q Would that variance make any difference to you, sir, as an expert?

A Not in my opinion, no, sir.

Q Not in your opinion?

A No, sir.

Q Well, didn't you tell us that one of the reasons or one of the items that you based your opinion on was the fact that the A was connected to the L and had a stroke at

the end of it?

A In my description I referred to the A as a double loop A , an A at the beginning and an A terminating the letter.

Q Now, is the A in that line 6 a double loop A?

A In line 6?

Q Yes, this one here (indicating).

A No.

Q Is the A in line 7 a double loop A?

A No.

Q So, sir, is it fair to say that what you have done in forming your opinion is you have picked out from various exemplars or samples that were furnished to you and not necessarily from the same particular signature, but you have picked out different items which you say gives you the right to express an opinion that the person who signed Thomas Tuccella on Exhibit 150 is the same person who signed Thomas Tucella ten times on 148-A, is that right, sir?

MR. SILVERMAN: I object to the form of the question, your Honor.

THE COURT: Sustained.

Q Now, sir, I think you made a point of the fact that it wasn't merely the top that caused you to think

these T's were similar, is that correct?

A Well, you pointed to all the ones that varied from the exemplar in question.

Q Right.

A You didn't point to those which are the same.

Q I pointed to every T in Tuccella in Exibit 148-A, did I not?

A Yes, sir.

Q And I believe, unless my hearing failed me, that you conceded that with the exception, I believe, of line 3, the T's in 150 are dissimilar to the tops of the T's in 148-A?

A They are dissimilar but not in all respects because each of those T's has one of the loops, the loop to the right of the top, as does the signature in question.

Q Isn't that a very common practice of a person writing a T, a capital T to have a loop to the right?

A Well, it might be, I would say, a characteristic of a particular person or an individual writing, but whether it is a common practice, meaning that many persons use that particular T to the omission of other types of T's, I wouldn't make that statement.

Q Have you seen it -- not in this case, but in other cases?

A I have seen it on occasion.

Q I said frequently.

A I said on occasion.

Q And how many occasion have you seen it in your 18 years or 20 years with the Federal Bureau of Investigation?

A Well, sir, we don't have a running tally on the number of times we see such a T.

Q I am certain you don't, but you must have some idea.

A No, sir, I don't have, but I have seen it.

Q Now, sir, is part of your identification based upon the embellishments at the bottom of the T's?

A Yes, sir.

Q And again we have some variance, don't we?

A Yes, sir.

Q And again, sir, don't we have a similarity with the embellishment appearing in Defendant's Exhibits AN and AN-2?

A Well, as I pointed out before--

Q Please, will you answer my question; do we have a similarity?

MR. SILVERMAN: Objection, your Honor.

I may be incorrect, but I thought those documents were excluded after my objection, your Honor.

THE COURT: I don't know that they have ever been offered. Are they --

MR. ROSENTHAL: I will offer them in evidence now. They are photographs of Defendant's Exhibit K in evidence, your Honor.

THE COURT: I don't think they have been offered yet.

MR. ROSENTHAL: I do offer them now.

THE COURT: And the witness has identified them as fair representations.

You are offering them?

MR. ROSENTHAL: I offer them now.

THE COURT: They are received.

(Defendant's Exhibits AN and AN-1 received in evidence.)

MR. ROSENTHAL: May I cross out the ID, Mr. Clerk?

THE CLERK: Yes.

Q Now, I show you Defendant's Exhibits AN and AN-1 in evidence and ask you, which I have just asked before, whetheror not the embellishments appearing on the t there are not similar to the embellishments that appear in both Exhibit 148 and on the t in Exhibit 150?

A No.

Q Not at all?

A No. The reason I stated--

Q The - your Honor, may he be allowed to answer the question?

THE COURT: Go ahead.

A The reason I state "no" is because I saw more dissimilarities than I do similarities. Now, there is a general similarity. But when you ask me if they are not similar, meaning are they not the same, I can't state that. I say no.

Q Well, nothing is the same in respect to handwriting, is there?

A I say there is a variance, but I pointed out that the top of this letter t is a very large loop formation and much shorter than the t's over on the Exhibit 148.

Also, that the bottom of this letter t is rounded, whereas in the letter t over Thomas it is a very angular, almost a retrace or a loop formation, and also, that the bottom loop on this letter t is small in respect to the bottom loops in the letter t in the words Thomas and Tuccella on Government's Exhibit 148.

Also, there is a curvature from that loop into the connecting letter r in this Defendant's Exhibit No.K which does not appear in the Thomas Tuccella signatures on Government's Exhibit 148.

Q Are you finished, sir?

A Yes, sir.

Q Okay.

Now, is there any similarity, or would you find any similarity between the fact that the t in the trucking is connected with the next letter?

A Do I find any similarity?

Q Yes. I will withdraw it.

Am I correct, sir, that many times people in writing a capital letter and then a word following it do not connect the capital with the immediate next letter?

A Of course that is individualistic. Again, whether it is a general feature, one often seen, I can't say, but I don't think that could be, say, unusual.

Q It would not be unusual?

A No, sir.

Q And would not a similarity be when you found somebody who did in fact connect the second letter with the capital, would that not be a similarity?

A Well, some people do both.

Q I asked you, sir, if that would not be similarity if you found that somebody did that.

A If they did it both in the known exemplar and questioned exemplar, it would be similar, yes, sir.

Q In fact, sir, wasn't that one of the items that caused you to say that in your opinion the last Lazravitch that appears on Exhibit 150, the third Lazravitch that appears on 150 was similar to some of the exemplars that appear on 147A?

A I don't know what you are talking about, what I said.

Q I hope I do. I don't know if I do or not.

1, 2, 3, sir?

A Right.

Q You have the l and the a connected, do you not, sir?

A Yes, sir.

Q I was referring to 150.

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Here, 147A, you have the l and a's connected, do you not?

A Yes, sir.

Q And here, in respect to Defendant's Exhibits AN and AN-1, you have the to and the r, true, different letters, but they are in fact connected, are they not?

A The t and the r are connected.

Q Right.

So there is that similarity between AN and NA-1 and Defendant's Exhibit K and the exemplars that appear on 147A.

Will you at least concede that much?

A I will concede they are both connected, yes.

Q Thank you.

And that that is a similar thing, is it not, as you understand the word "similar" to be?

A In respect to the fact they are both connected.

MR. SILVERMAN: Your Honor--

THE COURT: Is it a significant similarity to you as a handwriting expert?

THE WITNESS: Not really significant.

Q All right, let's see.

Item 4 in 150, the l and a are not connected, are they, sir?

A No, sir.

Q Nor does the a have any double loop at the top, does it, sir?

A No.

Q Item 3, it would appear that the a does have a double loop, would it not?

A Well, I can't see from here, but --

Q Well, do you have the original, sir?

A No, I don't.

MR. SILVERMAN: You took them.

MR. ROSENTHAL: The Lazravitch checks, 762 and 6847, Q-1 and Q-- Q31 and Q32.

Your Honor, in the meantime may I pass these to the jury?

THE COURT: Yes.

Are they in evidence?

MR. ROSENTHAL: They are in evidence, sir.

(Documents handed to jury.)

Q Look at ehe originals. Is there a variance between Q31 and Q32?

A Yes, sir.

Q In the endorsement appearing thereon?

A Yes, sir.

Q And one of the variances is the fact that in

Q31 the letter immediately to the right of the capital L is connected to the L?

A Yes, sir.

Q And the one appearing in Q32 is separated from the L, is it not?

A Yes, sir.

Q Now, sir, in all of the exemplars, the ten exemplars appearing on 147A,is thea in fact in all instances connected with the capital L?

A Yes, sir.

Q And would that be a variance?

A Yes, sir.

Q And would that be-- I will withdraw that.

Now, sir, getting back-- going back for the moment to Aurrichio, my recollection is,it may be wrong, that in your original testimony this morning, you stressed the fact that the two r's in both Q1 and Q2, which are part of Exhibit 150, in the name Aurrichio, that the two r's sort of went uphill, I think was the term you used, is that right?

A Yes, sir.

Q Now, is it fair to say, sir, that in Q-1 there is no question that the r's go uphill much higher and much faster than they do in Q-2?

A No, sir.

Q It is not fair to say that?

A It is fair to say that.

Q Thank you.

Q And on page 146A, you found one that sort of bore that out, did you not?

A I think there is more than one there, sir.

Q More than one?

A Yes, sir.

Q Well, one you bothered to chart a curve underneath it, didn't you, the fourth line?

A I think I did that on more.

Q All right.

Now, sir, is it fair to say that on line 6 you can almost lay a level on it there it is so even -- this is line 6, sir (indicating).

A Yes, sir, they are pretty even.

Q They are pretty even?

A Yes, sir.

Q And what about line 8, aren't they pretty even?

A No, sir, you see the second r sticks well above the first r.

Q The second r is above?

A Yes.

Q But it is merely the crown of the r that is higher, is it not, the bottom --

A Well, even from here I can see that the bottom is somewhat above the other r.

Q All right, then let's look at -- I wish you had numbers on these-- let's look at line 7.

Here the second r is lower than the first r, is it not?

A You might say the connecting stroke between the r's dips lower but the r's themselves are higher. In other words, the second r --

Q On line 7.

A The stroke coming off the second r is higher than the initial stroke of the first r or the terminating stroke of the first r.

Q Well, that's a matter of the way it meets your eye?

A From here, yes, sir, that's the way it meets my eye.

Q If I look at it from a different angle I might get a different impression, might I not?

A I don't know how youcould, that's the way it is.

MR. SILVERMAN: Objection, your Honor.

Q And let's look at the very first line.

A The very first line, it seems to be pretty much on a level.

Q Now, sir, let's look at the o's.

I think the top signature Q-1 appearing in Exhibit 150 has a terminal stroke on the o, does it not?

A Yes, sir.

Q And on Q-2, there is no such stroke, is that right?

A That's correct.

THE COURT: Mr. Rosenthal, we are going to have to suspend in a minute or two or now, if that is suitable to you.

MR. SILVERMAN: Your Honor, Mr. Oberg is going to be testifying in another matter tomorrow in another part of the co8ntry, and if I can ask the Court's indulgence to have Mr. Rosenthal continue--

THE COURT: Well, I told you that we were going to have to stop about this time.

How much longer do you need?

MR. ROSENTHAL: I have a good deal more, Judge.

THE COURT: He is going to have to wait in this part of the country to complete his cross-examination.

MR. SILVERMAN: May I just consult with him one minute about it? He had told me about things he had to get

from Washington and see if -- may I just approach him a second?

THE COURT: Yes, you may consult with him.

THE COURT: Ladies and gentlemen, there is no point in keeping you while this conference goes on. We do have to suspend just about now.

Let's resume at 10:00 a.m. tomorrow.

Good afternoon.

(Jury left the courtroom.)

THE COURT: Mr. Kutner, will you come here where you can hear and be heard?

Just stand here. I have talked to counsel about your note and the attachment.

First let me ask you, how is your ear at this time?

ALTERNATE JUROR KUTNER: About as bas as yesterday which means about 15% stopped up.

THE COURT: I think that to just allow you to go would be a regrettable circumstance. I'd like you to get an affidavit from your physician about the degree of loss of hearing and about whether pain relievers and antibiotics can't keep you in shape for the jury service,and I'd like an affidavit from you on your condition and stating that if you are excused from jury service, it would

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be your plan to go home and not work.

If that is your plan, I would consider again with counsel tomorrow your application to be excused and if the affidavits seem persuasive of the things I mentioned, I guess we will have to excuse you.

ALTERNATE JUROR KUTNER: My only question is whether the physician is qualified on a loss of hearing, I just don't know.

THE COURT: You tell him to tell whatever he can. And you can bring it in in the morning.

MR. SILVERMAN: After the juror leaves, I'd like to address the Court.

THE COURT: All right.

(Alternate Juror Kutner left the courtroom.)

MR. SILVERMAN: There are two witnesses outside who have been here on a number of days and because of the cross-examination had to sit here through no fault of the government, Mrs. Ferraro and Mrs. Nunkin, two former employees of Paterno & Sons, Inc.

At this time, your Honor, why, I am not sure whether those people are going to show up tomorrow.

THE COURT: Where are they?

MR. SILVERMAN: Outside.

THE COURT: Have them come in and I will order

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them to come in.

Why are you not sure?

MR. SILVERMAN: They possibly expressed other views to me, your Honor, as to whether or not they will be able to make it.

And I have reason to believe the government's case will be finishing up tomorrow or the following day.

THE COURT: I hope so.

I understand that both of you ladies have been put to some considerable inconvenience by being here waiting under subpoena. Mr. Silverman is quite certain that you will be reached and complete your testimony and I just wanted to say we expect you to be here tomorrow and we will do everything we can to see that you get on and off.

Okay.

Anything else?

MR. SILVERMAN: No, your Honor.

THE COURT: All right, gentlemen, see you in the morning.

(Adjourned to February 14, 1974 at 10:00 a.m.)

...

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Hyman Spitalewitz	770	774	775	
William S. Oberg	777	807		

EXHIBIT INDEX

Defendant	Identification	In Evidence
AN		889
AN-1		889

mkbr 903

United States of America
v
Michael Paterno, George Denti
and Paterno & Sons, Inc.

73 Cr. 410

New York, February 14, 1974
10:00 a.m.

- - -

(Trial resumed.)

- - -

(In open court; jury not present.)

THE COURT: Are we ready?

MR. ROSENTHAL: Yesterday at the side bar I showed the Court a copy of the letter I received, dated February 4th, from Mr. Silverman, concerning the fact that he had submitted the documents in question to another expert, Luciano V. Caputo, formerly employed by the U.S. Treasury Department; and attached to the letter was a photocopy of Mr. Caputo's report.

I do not think it was really identified at the side bar conference, and I would like to have it marked for identification so that the record will reflect what I was talking about.

THE COURT: Surely.

(Report marked Defendants' Exhibit AO for identification.)

THE COURT: Anytying else before we get the jury in?

MR. BRILL: Yes, sir.

Mr. Silverman and I have agreed, your Honor --

THE COURT: No. Is this necessary to interrupt the cross examination of Mr. Oberg?

MR. BRILL: No, no.

THE COURT: Well, let us remember where we are. The jury is here on time; I do not want to keep them unless it is necessary.

Get the witness and get the jury.

(Jury present.)

W I L L I A M S. O B E R G, resumed.

THE COURT: Allright, Mr. Rosenthal.

MR. ROSENTHAL: May we have the exhibits that were on the handwriting.

MR. SILVERMAN: Mr. Oberg, would you like to hang these up, sir?

(Witness places on the easel.)

CROSS EXAMINATION CONTINUED

BY MR. ROSENTHAL:

Q Mr. Oberg, I think you told us that Exhibit 150 and Exhibit 147-A are enlargements, is that right, sir?

A Yes, sir.

Q Did you prepare them?

A They were prepared at my direction.

Q Do you know who prepared them?

A I don't know who personally prepared them except they were prepared in our photographic section.

Q So that you did not observe the actual preparation of it?

A No, sir.

Q Now, sir, is it not a rule among handwriting experts that a scale should be attached to any enlargements?

A Well, sir, the scale in this particular instance was not attached to the enlargement.

Q I see that; and it was not reproduced in the photograph either?

A No, sir, but the scale is on the negative.

Q Well, we do not have the negative.

A I have it.

Q I mean, we are not viewing the negative, are we?

A No, sir.

Q And if the scale was on the negative, if it were printed without being blocked out, the scale would appear on the exhibit that is hanging on the wall; is that not true, sir?

A Well, sir, since the scale itself has no pertinent relation to the handwriting examination, I did not include it on the exhibit.

MR. ROSENTHAL: I move that that be stricken as not responsive.

Q I asked, sir.

THE COURT: No, I will allow it.

Q Mr. Oberg --

A Yes, sir.

Q I am not a photograph expert and I do not pretend to be --

THE COURT: Just ask him questions.

Q If a scale appears on the negative and the negative is printed and results in 150, 147-A or 146-A, down to 149-A, the scale would automatically appear upon the postiive print, would it not?

A Providing the entire negative were printed.

Q And to prevent it from appearing you had to crop it, didn't you?

A I cropped it not for that purpose but to make it convenient and to make the exhibit less bulky.

Q Convenient for whom, sir?

A For my carrying them to and from this court.

Q How much space on the left side of this exhibit

would the scale occupy?

MR. SILVERMAN: Your Honor, I am going to object to this line.

THE COURT: Do you want the scale in evidence?

MR. ROSENTHAL: I want to find out what the scale is.

THE COURT: Well, ask him. He says he has it.

Q What was the scale at 146, 147, 148 and 149-A?

A We have an identification tab which is attached to this, and this tab has a one-inch margin on either side of it.

THE COURT: Just tell him what the scale is.

THE WITNESS: That one-inch margin on each side of the tab gives the scale from which the enlargements are developed. In other words, this tab is photographed along with the original.

THE COURT: Do you know the scale.

THE WITNESS: Well, this is a 4-1/2 time enlargement.

THE COURT: That is all he asked you.

THE WITNESS: I see.

Q Now was the scale on 150 --

A The same.

Q The same?

A Yes, sir.

Q When you enlarge something 4-1/2 times you tend to have some distortion, don't you, sir?

A Well, we use a very large lens, and you can see the lines are straight. We do not have that distortion of which you speak.

Q You have none whatsoever?

A If it is, it is very, very slight. I couldn't detect it.

Q And no matter how slight the distortion is it is magnified four and a half times, isn't it, by reason of the scale being four and a half?

A No, that would be a resultant distortion. It wouldn't be magnified 4-1/2 times.

Q Now, I think it was yesterday you told us that the second signature appearing on 150, that the John angled to the left, the J --

A Yes.

Q -- the top part of the J. However, I think you said the staff was in a straight line.

A Well, the staff of the letter itself is more or less straight but it slants from upper left to lower right.

Q You mean it is straight to another straight line, don't you?

A I don't understand that question.

Q Well, would you step down here, please? Do you have a ruler with you?

A No, sir, I don't.

Q Isn't that part of the tools of the handwriting expert?

MR. SILVERMAN: Objection.

THE COURT: Sustained.

A I wasn't expecting--

THE COURT: When the lawyer stands up, Mr. Oberg--when counsel gets up, please wait so I can rule.

THE WITNESS: Yes, sir.

Q Mr. Oberg, I will give you a choice of rulers, one is a clear plastic and one is an opaque plastic.

A I don't know which you would prefer to use.

Would you measure and show us where the J --

A I prefer that.

Q You prefer that.

-- where the second J in John angles?

A It angles from upper left to lower right.

Q Now, will you show us where you say the vertical line is in respect to the staff, the second half of the John?

A I don't know what you mean by "show me the verticall staff."

Q Well, you told us yesterday, if my recollection is correct, that in the exemplars 146A, the staff, which is the right-hand line of the letter --

A No, it is the line that runs from the top to the bottom.

Q Yes, on the right-hand side because you have loops here -- was in every instance vertical, straight up and down?

A The staff is. I didn't say it was vertical, I said it was straight.

Q Straight. I'm sorry. I'm sorry I chose the wrong word.

THE COURT: No, no, Mr. Rosenthal. Straight and

vertical do not mean the same thing. Something may be straight and horizontal.

MR. ROSENTHAL: True.

THE COURT: Or it may be straight and at an angle between vertical and horizontal. So it is not simply a word meaning the same thing.

MR. ROSENTHAL: I said I chose the wrong word, Judge. I admit that, and it was not intentional.

Q Now, sir, looking at 146A, you have the straight staff, is that correct, sir?

A Yes, sir.

Q And the second line of 150, you have a straight -- the upper part of the staff is straight going to the left, is that right?

A Yes, sir.

Q And then, is the lower part straight?

A Well, it is straight to a degree, before it starts this turn to form the bottom loop.

Q It is not as straight as these, is it? When I say "these," I am referring to 146A.

A Well, these are straight, too, to a point before they begin making the bottom loop formation.

Q Yes, but they go much further below the -- I will withdraw that.

The bottom portion of the J's in 146A are much longer, are they not, than the one in 150?

A Yes, sir.

Q And the bottom portion of the J's in 146A are not as squat or as fat as the bottom portion of the J in 150?

A That's correct.

Q Now, sir, will you look at the end here on 1 and 2?

A Yes, sir.

Q Now, the end on the top portion of 150, does it have two peaks?

A This has two peaks except the last one is very shallow, and it doesn't extend up very much.

Q Except that the last one actually is the tail to it, is it not, of the first peak?

A Well, you could call it a tail but I do say it is a flattened-out peak, it is what it amounts to.

Q I see.

Now, look at the first, second and right down the ten exemplars here. Don't they have two peaks?

A Yes, sir.

Q Now, the second one in 150 does have two peaks, does it not?

A Yes, sir.

Q And two distinct peaks?

A Yes, sir.

Q Not flattened out?

A That's right.

Q So there is a difference between the top one and the second one, is that correct, sir?

A Yes, sir, there is a variance, sir.

Q Now, all these fitures that you have put on here in red ink, or red pencil, I don't know which, are your own figures or were they done for somebody else?

A No, sir, I placed them there.

Q You placed them there.

And these red marks and arrows and whatnot on 146A and 149A, 147A -- I don't think there are any on 148A-- yes, on 148A -- were they placed there by you?

A Yes, sir.

Q And they were not in the original photograph, were they?

A No, sir. And they are not on the originals, the exhibits. No, sir.

Q Now, sir, in the first Aurrichio, you have the c, you have a dotted line from the u to the h, is that right?

A That's correct, sir.

Q And there the c is ascending?

A Yes, sir.

Q Now here the c is descending, is it not?

A I can't say that it is. It is probably on the same level as the i which just precedes it.

Q Now, sir, you have drawn a dotted line and you can see, looking at your dotted line, that the c is starting to and is descending, is that not so?

A That is not the way I read with my eye. It seems level or on the same plane as the i.

Q What about on the same plane as the r?

A No, sir, it is slightly above the r. The r is slightly lower on the left side.

Q The second r is lower than the c?

A Yes, sir.

Q Would you measure it, please?

A It would end right up with the i.

Q I asked you to measure the r and the c, say from where your phorograph stops. Wait, I withdraw that.

Am I correct in assuming that these are all the same?

A No, sir, they are not.

Q They are not?

A No, sir.

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Q Are these-- no, they are not. Obviously, I can see that.

So there is nothing that you can measure from the bottom - to the bottom of the r, that would give you a comparison, is there, sir?

A Not unless you could draw a line directly from the bottom of the letter a over to the bottom of the letter o and measure from that point up.

Q Where are you going to get your measurement to be certain that it is even from the letter a to the letter o, that that line is going to be even and not at an angle?

A It will be along the base line of writing, that's what I was making reference to.

Q What, sir?

A It would be along the base line, this letter you are making reference to, it would be from the bottom of the letter a to the bottom of letter o forming the base line of writing.

Q Following the base line of writing?

A Yes.

Q All right, will you take your ruler and figure it out?

A Well, I'd have to have something with which to draw a line here.

(Pen handed to witness.)

Q Now, you would have to do the same with that, wouldn't you? To find out whether or not the c is ascending here and descending here?

A You mean from this point?

Q Yes.

A On this particular case I would mark from the connecting stroke between the--

(Witness writes.)

Q Sir, this line that you have drawn here, runs through part of the letter, does it not?

A Yes, sir, the only reason I did ths is because you asked me from the bottom of the a to the bottom of the o. Actually perhaps it should be drawn through the base line.

Q And this line angles, does it not?

A Yes, sir, it does.

Q So it is not straight across the way this is, is that right?

A That's right.

Q So it would be of no value in measuring, would it?

A No, sir.

Q Would you resume the stand, Mr. Oberg.

(Witness resumes stand.)

Q Mr. Oberg, how long have you been testifying in court -- I mean for what period of time?

A Well, I think the first time I was in -- let me see -- probably October 1958 the first time I testified.

Q 1958?

A Yes.

Q That is approximately 15-1/2 years ago, is that right?

A Yes, sir.

Q And with what frequency have you testified?

A Well, I suppose averaging out, perhaps it will be somewhere about once a month, perhaps, or less.

Q And a fair statement would be that during the summer months the courts are closed -- or at least they used to be, is that right?

A I do not know anything about the court schedule, sir.

Q Well, you normally did not testify in court during the summer months, did you?

MR. SILVERMAN: Objection, your Honor -- irrelevant whether he testified during the summer.

THE COURT: Why is it relevant, Mr. Rosenthal?

MR. ROSENTHAL: I wish to develop the number of months of the year that he was engaged in court work.

he said about --

THE COURT: Why is that relevant?

MR. ROSENTHAL: I think it goes to the credibility of the witness, your Honor. We had a statement the other day, and I would rather not reveal this time in front of the witness --

THE COURT: Then come to the side bar.

MR. ROSENTHAL: Yes, sir.

(At the side bar.)

MR.ROSENTHAL: He said that he has testified in about 80 or 90 cases in which I think or thought was an extreme minimization of his court experience.

THE COURT: Minimization?

MR. ROSENTHAL: That he reduced his court experience.

THE COURT: Do you think he had more?

MR. ROSENTHAL: Obviously he has.

THE COURT: What leads you to believe that?

MR. ROSENTHAL: He says 18 years since --

MR. BRILL: 15.

MR. ROSENTHAL: 15 years he --

THE COURT: Let me ask, what difference does it make? The government wants to maximize it and you say he lied and minimized it?

MR. ROSENTHAL: I would say that he did, in that he would want to convey the thought to the jury that he was not a professional witness.

THE COURT: Mr. Rosenthal, this witness was on the stand for less than an hour. You have had him on cross for almost a full day --

MR. ROSENTHAL: True.

THE COURT: -- and that mere measurement of time would not be significant except that I must express to you at the side bar that much of it has been wasted. I will allow it, but please have this suggestion in mind.

Go ahead.

MR. ROSENTHAL: I will. Will yougive me a moment to confer with Mr. Brill?

(Mr. Rosenthal confers with Mr. Brill off the record.)

(In open court.)

BY MR. ROSENTHAL:

Q Mr. Oberg, taking your figure of approximately once a month for 15 years, and allowing a period of time for vacation and holidays and the like, that would average out to about a minimum of ten times a year, would it not?

MR. SILVERMAN: Objection, your Honor.

THE COURT: Sustained.

Q Wouldn't you say that a fair figure as to the number of times that you have testified --

MR. SILVERMAN: Objection.

THE COURT: Wait just a second. Let him finish.

(Record read by the reporter.)

Q -- since you have been in employment of the Federal Bureau of Investigation would be approximately somewhere between 3 and 500 times?

MR. SILVERMAN: Objection, your Honor.

THE COURT: Overruled.

A I say that the number of times I have testified as between 85 and 90 times.

Q Then, Mr. Oberg, have you always testified in behalf of the government?

A No, sir. I have been called upon to testify for the defense.

Q How often?

A Not many times but a few.

Q Once?

A I think it has been more than one occasion.

Q Possibly twice?

A Yes, sir.

Q And how long ago was that?

A Well, I do not exactly remember the time so

I can't say how long ago it was.

Q Well, that was a rather novel experience, wasn't it, testifying for the defense?

A Yes, sir.

Q And as you sit there now you cannot recall when it was?

A No, sir, I can't.

Q Can you recall in what court it was?

A Well, I think at one time it was in Anchorage, Alaska, and the defense called upon me to testify as a defense witness on one occasion -- that is the one occasion I can remember, but there may have been others that I don't recall.

Q Now in your course of studies in the federal bureau of investigation I think you told us that the library there contained the book by Albert S. Osborn or Albert D.Osborn, is that correct?

A Yes, sir.

Q Do you know which it was?

A No, sir. I don't recall the middle initial but I recall it was the elder -- the grandfather who wrote the book.

Then he was joined by his son in practice, and as of now there are two younger men who are the sons --

or the grandsons.

Q Now the grandfather wrote a book, and the grandfather was Albert S.

A Yes.

Q And then do you recall seeing this book in the library "Questioned Document Problems, Albert S. and Albert D. Osborn" (handing)?

A Yes, sir, I do.

Q And that was one of the books that other FBI agents used in the course of your training, and also in the course of your work, is that not correct?

A Among other books, yes.

Q Right, of course among other books.

Now, sir, you don't say that your field is an exact science, do you?

A No, sir.

Q It is not like fingerprints?

A Well, I am not familiar with the examination of fingerprints.

Q But you have heard, have you not, that no two people have identical fingerprints.

MR. SILVERMAN: Objection, your Honor.

THE COURT: Sustained.

Q And you are not a ballistic expert?

A I am not a ballistic expert either.

Q I appreciate that but you, as a member of the American Society of Forensic Sciences or Science -- I am not certain which it is -- have discussed with other members who are ballistic experts, have you not?

MR. SILVERMAN: Objection, your Honor.

THE COURT: Sustained.

Q Are there ballistic experts that are members of the society to which you belong?

A Yes, sir, there are.

Q And are there fingerprint experts that are members of the society to which you belong?

A Yes, sir.

Q Now, sir, did you do any work in connection with the Clifford Irving or Hward Hughes case?

A No, sir, I didn't.

Q You do know that Albert D. Osborn and his two sons -- I believe Russell is one, and I am not certain of the name of the other -- did issue a report --

THE COURT: Wait a second, Mr. Rosenthal. Are you going to ask him about a report in some other case on some other facts and whether that report was or was not accurate? Is that what you are going to ask?

Please answer me.

MR. ROSENTHAL: I was going to ask him as to whether or not he knew that if the man whose book was used by the Federal Bureau of Investigation and by this witness in connection with his training and in connection with his work, had made an affidavit to the effect that the handwriting in the Clifford Irving case or the Howard Hughes case, whichever way you wish to label it, was in fact that of Howard Hughes, and that subsequently -- and I think we all know-- Clifford Irving confessed that it was not, and that it was a forgery?

MR. SILVERMAN: Your Honor, I am going to object to that. If Mr. Rosenthal would like to add to that also that there was a handwriting expert that properly identified the handwriting at that time -- I think he should add that also in this statement that --

THE COURT: Well, the objection is sustained. I am going to ask the jury to disregard that question -- remember, you have enough trouble focusing on this case without trying to decide the Clifford Irving case which, as I recall, did not go to trial, the evidence of which is not before you, and the issues of which are not known to me, and I suspect are not known to you with clarity sufficient to be of any use.

We are not going to rely on newspaper reports,

and I am certainly not going to allow the record, if there was one, or anything connected with the Clifford Irving matter to be introduced in this case.

MR. ROSENTHAL: I have been privy, your Honor, to see a copy of an affidavit which is filed in the building immediately to the --

THE COURT: Mr. Rosenthal, you heard the ruling. Please proceed.

MR. ROSENTHAL: Your Honor, I said -- well, I am sorry.

BY MR. ROSENTHAL:

Q Mr. Oberg, my recollection is when you took the stand you described yourself as a special agent of the Federal Bureau of Investigation --

A That's correct.

Q -- is that correct?

A Yes, sir.

Q Now, sir, that is a title borne by all agents of the Federal Bureau of Investigation, is it not?

A Except for the inspectors and the assistant directors, and so forth.

Q The men who are above?

A Yes.

Q But the agents are all special agents, is that

correct,sir?

A That is the term used, yes, sir.

Q And the fact that the word "special" appears before the word "agent" inyour title does not mean that you, as distinguished from -- I do not know how many FBI agents there are; let us say 1000 or 1500, or possibly more -- that you are a rank above the other agents -- your fellow agents?

A No, sir.

Q And it does not refer to the fact that you have developed during your years of experience with the Federal Bureau of Investigation a certain expertise in a particular field?

A Did you say I have not?

Q That you have.

A I have.

Q I say the fact that you are called special agent, theword "special" is not added to your title of "agent" merely because you have developed a certain expertise in a particular field?

A No, sir; it applies to all agents of this rank.

Q And would you tell us, sir, why you cropped the scale?

A Well, as I said, sir, to make it more convenient

to carry it from my office to court, and also so that it would limit the amount of space required to illustrate the display.

Q How much difference would it have made?

A None, because I have all the pertinent writings on the exhibit.

Q I say,how much difference in the size of the exhibit would the addition of the scale make?

MR. SILVERMAN: Objection, your Honor.

THE COURT: No, I will allow it.

A Well, sir, the width probably would have been considerably wider, and the length much longer than that which appears in Government's Exhibits 146 through 149-A; and also I limited the other exhibit , 150, to the pertinent endorsements only, since I did not want to include the entire check.

Q When you say "considerably wider," putting the scale on here would have meant merely attaching a ruler, isn't that correct, showing the number of inches?

A Well, sir, we do not use a ruler. We use, as I said, this identification tab which has the scale on it.

Q Right on the negative?

A Yes, sir.

Q I mean, before you have it photographed.

A At the time you photograph the original we include this exhibit -- I mean this identification tab.

Q So that it will be on the negative after you photograph it, is that right?

A Yes, sir.

Q And the purpose of doing it, sir, is so that when you develop it it will be on the print also?

A Yes,sir, so that we know who the photograph belongs to, which agent it belongs to, and also, as I say, it is a matter of scale.

Q And the matter of scale would be of assistance to anybody that was attempting to cross examine you, sir, in respect to the photographs, would it not?

MR. SILVERMAN: Objection, your Honor.

THE COURT: On what ground?

MR. SILVERMAN: I do not think it is relevant as to what he believes the scale would be used for.

THE COURT: Yes. I do not think his judgment about what cross examination is pertinent or that he is expert enough to judge that. I think it is sufficient that if you think it is useful you may or may not be able to elicit it.

Sustained.

Q Well, doesn't the prima of the Federal Bureau of

Investigation in respect to questioned documents provide that a scale should be upon the instruments photographed?

MR. SILVERMAN: Objection, your Honor. What prima?

THE COURT: Yes. First lay a foundation. I do not know what that prima is?

Q All right. Is there a document or book or manual in respect to questioned documents in respect to the Federal Bureau of Investigation?

A No, sir, there is not.

Q None whatsoever?

A No, sir.

Q Well, is there a book or manual or prima in the profession, to use in the profession of persons who examine questioned documents?

A Well, at college we do use textbooks and so forth. We used, including among others, other textbooks of Mr. Osborn. There was one written by Mr. Ordway Hilton of New York.

There was another one written by Wilson Harrison, an Englishman, and others.

Q And don't all of these advise the examiner of questioned documents to establish a scale and have it on the negative, have it show on the negative?

A I don't know that they all advised that but we had that on our photographs.

Q And don't they also advise that it be on the negative so that the print made from the negative will show the scale?

A We do have it on the "as is" principle. We do not place it on the exhibits which we take to court for display purposes only.

Q And the reason that you do not place it on the exhibits that you take to Court for display purposes only is that you hope no one will ever ask about the scale, isn't that so?

MR.SILVERMAN: Objection.

THE COURT: No, I will allow that.

Is that the reason?

THE WITNESS: No, sir, that is not the reason. The reason --

Q And the only reason --

THE COURT: Wait, let him finish.

MR. ROSENTHAL: I am sorry.

A The reason that it does not appear on the display exhibits is because this scale -- the identification tab is not placed on the evidence at the time it is photographed it is placed alongside, on the outer edge, when this was

masked off to reduce the size, and thus make it more feasible or easier to carry to court, that portion was masked off.

Q Will you please come here, sir, and show us how much greater that exhibit would be --

THE COURT: Mr. Rosenthal, will you come to the side bar?

MR. ROSENTHAL: I will withdraw it.

THE COURT: Will you come to the side bar with counsel?

MR.ROSENTHAL: I will stop.

THE COURT: Are you stopping?

MR. ROSENTHAL: Yes.

THE COURT: Then we do not have to come to the side bar.

Let me say the reason we were going to discuss this is because the blowups and the things they blow up are in evidence, and I think there is a point at which if there is any interest in the comparison we have sort of had that subject.

Please proceed.

MR. ROSENTHAL: I have no further questions.

THE COURT: Anything from you, Mr. Brill?

MR. BRILL: No.

THE COURT: Any redirect?

MR. SILVERMAN: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. SILVERMAN:

Q Mr. Oberg, when you made your examination and you made your conclusions with respect to Mr. Denti, were you also given samples at that time of known handwritings of other individuals?

A Yes, sir.

Q And did you draw any conclusions as to whether or not those other individuals had signed any other checks?

A Well, as a result of comparing the handwriting of these other individuals with the endorsements on the check I noticed differences indicating that they had no involvement in the preparation of those endorsements.

Q Is it fair to state that Mr. Paterno's signatures were among those that you examined -- is that correct?

A Yes, sir.

Q Or the signature of Michael Paterno -- you do know who actually signed that sample but the sample that you examined, you concluded was notsigned by certain people who signed those checks, is that correct?

A Are we speaking of the endorsements?

Q The endorsements, yes.

A That is right, he did not prepare any.

Q You were asked that question by Mr. Rosenthal yesterday in relation to whether or not -- I will withdraw that question.

You have identified checks, five checks being signed by the defendant George Denti, all bearing the endorsement of Arthur Lazravitch, John Aurrichio and Thomas Tuccella. You were asked a question by Mr. Rosenthal as to whether or not Mr. Denti, or the known handwriting of Mr. Denti when you made any comparison of the known handwriting of Mr. Denti with the signature of Michael Catenzaro to the checks bearing the endorsement of Michael Catenzaro.

At that time, sir, did you conclude whether or not Mr. Denti did or did not sign those checks?

MR.ROSENTHAL: That is objected to, if the Court please.

MR. SILVERMAN: Excuse me.

THE COURT: On what ground?

MR. ROSENTHAL: On the ground that he has testified here on direct examination as to who he thought, and he identified five signatures that he says in his opinion are comparable to the signatures of George Denti.

THE COURT: Yes?

MR. ROSENTHAL: To now ask him concerning Catenzaro -- I don't remember the particular question that Mr. Silverman was referring to that was asked on cross examination but -- well, all right, I will withdraw it.

Q Did you form any conclusions as to whether or not George Denti did not sign the signatures or the endorsements beasring the name Michael Catenzaro?

THE COURT: Look, read the question, Mr. Kligman, to which the objection was made, and withdrawn. The witness may answer that.

(Question read.)

A In that respect I found characteristic --

THE COURT: Did you make a conclusion on that subject?

THE WITNESS: No, sir.

THE COURT: You had no conclusion as to whether he did or not?

THE WITNESS: Well, it was inconclusive.

THE COURT: All right, next question.

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Q Did you at that time eliminate the known handwriting of Mr. Denti as you eliminated the other signatures as having signed the endorsement Michael Catanzaro?

MR. ROSENTHAL: That's objected to, if your Honor please.

THE COURT: Sustained.

Q Mr. Oberg, in relation to the typewritten material that you have examined, do you have in your laboratory the style and size of type from the respective companies of the typewritten documents that you have examined?

A Yes, sir. We have a file of standards which was received from the companies. We must have approximately 1700 different styles of type.

Q In relation to each one of the typewriting documents that you examined, did you also examine the same size and style of type that you compared to the invoice that you had from each of those respective companies?

A The exemplar on file, yes, sir.

MR. SILVERMAN: No further questions.

REDIRECT EXAMINATION

BY MR. BRILL:

Q At the time-- let me show you this for a moment, please, Mr. Oberg.

You have identified Exhibit 156 for identification

as your report of handwriting examination, is that correct, sir?

A Yes, sir.

Q And in it you stated, among other things, that five sheets of the known handwriting of Michael Paterno were submitted to you, is that correct?

A Yes, sir.

Q And those five sheets consisted of Exhibits 151, 152, 153, 154 and 155, isn't that so?

A Yes, sir.

Q And you examined those with the same care that you described the examination which you conducted of the other documents that you described as having been submitted to you?

A Yes, sir.

Q And you concluded that none of the handwriting on any of the endorsements of all of the questioned documents were those in the hand of Michael Paterno, isn't that right?

A Let me put it this way. I do not identify Michael Paterno as the writer of any endorsements. There were discrepant characteristics between the exemplars and the known endorsements which led me to this conclusion.

Q Didn't you say a few moments ago on redirect

examination --

THE COURT: Mr. Brill, what he said a few moments ago, the jury heard.

Ask him something else.

MR. BRILL: Very good, sir.

Respectfully except.

Q Can you tell us how many questioned endorsements you examined?

A I believe, sir, that there were 48 checks involved.

Q And in your report you did not state that any one of those was signed by Michael Paterno, isn't that correct?

A That's right.

MR. BRILL: Thank you.

I have no further questions.

MR. SILVERMAN: No other questions, your Honor.

RECROSS-EXAMINATION

BY MR. ROSENTHAL:

Q You just told Mr. Silverman on redirect that in your office, in the laboratory at least, there are some 1800 different type faces --

THE COURT: I think he said 1700.

MR. ROSENTHAL: 1700.

THE COURT: What did you say?

THE WITNESS: 1700.

THE COURT: If you wouldn't tell him what he just said and just asked him questions, we'd get on.

Q Are there not also statistics there concerning the number of typewriters manufactured by the various concerns up to each year?

A No, sir, there is not.

Q No such statistics?

A No, sir.

Q Have you ever taken a tour of the IBM factory down in Lexington, Kentucky?

A No, sir, I haven't.

Q You do know that they do conduct such tours for questioned document experts, don't you?

A I have spoken to an agent who has taken that tour, yes, sir.

Q But you never bothered to do so?

A I have never had the opportunity.

Q You haven't had the opportunity, you have been in court too much testifying, is that right?

MR. SILVERMAN: Objected to as argumentative.

THE COURT: Sustained.

Anything else, Mr. Rosenthal?

MR. ROSENTHAL: No.

me:mq 5 Oberg-redirect

THE COURT: Anything else, Mr. Silverman?

REDIRECT EXAMINATION

BY MR. SILVERMAN:

Q Would your conclusions as far as the typewriting as to any of the documents to be examined be different if you knew that there were one thousand typewriters existing of a make or one million typewriters existing of a make?

MR. ROSENTHAL: That's objected to, if the Court please.

THE COURT: Sustained.

JUROR No. 1: May we have a recess?

THE COURT: Well, you are leading a very leisurely life, but if you want one -- .

JUROR No. 1: They want one.

THE COURT: All right, you are in charge of your fellow jurors.

Are you through with Mr. Oberg?

MR. SILVERMAN: Yes, your Honor.

THE COURT: All right, let's take a ten-minute recess.

(Witness excused.)

(Recess.)

me:mg 6 Sheehan - direct

P A U L V. S H E E H A N, called as a witness by the government, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SILVERMAN:

Q Mr. Sheehan, would you please keep your voice up, sir, so the people in the back will be able to hear you.

What is your occupation, sir?

A I am office manager of the Westchester Teamsters Welfare and Pension Fund.

Q And what is the name of that local?

A Teamsters Local 456.

Q And what type of union members belong to Locl 456, what type of work do they perform?

A Construction, coal and oil and building material.

Q How long have you been employed by Local 456, sir?

A Since 1949.

Q And what are your responsibilities with Local 456?

A I take charge of the welfare-pension fund, the operation of it.

Q What is the geographic location of 456, what

me:mg 7 Sheehan-direct

counties do they include?

A Westchester and Putnam County.

Q During the period of 1965 through 1970, did the union have contracts with contractors, people in the construction business?

A They did, yes.

Q Did you cause a search of your files to be made to determine whether certain named individuals had contracts with your local?

A I did.

Q And did you cause a search to be made for the names of John Aurrichio, Michael Catenzaro, Anthony Ferrotta, Arthur Lazravitch, Thomas Tuccella and Paterno & Sons, Inc.?

A I did.

MR. BRILL: I had the same objection, your Honor, I raised heretofore with respect to this type of testimony.

THE COURT: Well, without recalling it precisely; I have overruled it in the past?

MR. BRILL: Yes, your Honor did.

THE COURT: All right.

MR. BRILL: Now may I ask that we take it subject to connection?

THE COURT: All right.

MR. BRILL: And motion to strike?

THE COURT: All right.

Q Your answer was, sir, that you did?

A I did.

Q Did you find any contracts with any contracting firm or contractor operating under the name of John Aurrichio, Michael Catenzaro, Anthony Perrotta, Arthur Lazravitch or Thomas Tuccella?

A No, I have not.

Q Did you find any contract in your files for the firm Paterno & Sons, Inc.?

A Yes, I did.

Q I'd like to show you Government's Exhibit 110 for identification and ask you if that's the contract that you found, sir?

A It is.

Q And who is the officer -- what is the name of the officer that signed this contract, sir?

A Officer -- the employer or the union?

Q The employer.

A Well, it is Paterno, the last name, the first name, the writing I am not too --

Q Okay.

MR. SILVERMAN: I'd like to offer it in evidence.

MR. ROSENTHAL: What exhibit is it?

MR. SILVERMAN: 110.

MR. BRILL: Your Honor, my objection is to relevancy but I do concede that the signature is that of Mr. Michael Paterno.

THE COURT: All right, it will be received.

(Government's Exhibit 110 received in evidence.)

MR. ROSENTHAL: Is this being received only with respect to Michael Paterno or Paterno & Sons, Inc.?

I submit that is not applicable to the defendant Denti who is not a signatory to that contract and at that time I don't believe he was even an officer of Paterno & Sons, Inc.

MR. SILVERMAN: It is being offered as against the defendant corporation and against defendant Michael Paterno.

THE COURT: Not as against George Denti?

MR. SILVERMAN: Not against George Denti.

THE COURT: All right.

Q What period of time does this contract cover?

MR. BRILL: It is in evidence, Judge.

THE COURT: Pardon?

MR. BRILL: He is now asking for the period of time. It is in evidence.

THE COURT: Yes.

MR. SILVERMAN: I will ask the next question.

Q Mr. Sheehan, during the period of time that this contract was in effect, who was responsible for the payment of union members' welfare and pension dues?

A The employer Paterno & Sons.

Q Does the union maintain records of the payments received from the employers on behalf of its employees?

A They do.

Q Did you examine the records maintained by your local to determine whether or not there were any payments received by certain named individuals?

A I did.

MR. BRILL: This line, if your Honor plases, comes within the scope of my objection.

THE COURT: All right, same ruling, Mr. Brill.

MR. BRILL: Thank you, sir, and the same motions.

Q Was there any record received in your local, any record of any payment received from any employer or contractors under the name of John Aurrichio, Michael Catenzaro, Anthony Ferrotta, Arthur Lazravitch or Thomas Tuccella for employees working for these individuals?

A None that I could find.

Q Mr. Sheehan, do you know what a shop steward is?

A Yes.

Q And what is a shop steward?

A A shop steward's main job is to take care of the grievances that's on the job and if he can't handle them himself, to report it back to the business agent.

Q Now, when you say "on the job," are you referring to a particular job site?

A Job site.

Q And what type of grievances does the shop steward decide?

MR. BRILL: Your Honor, I object to this. Wholly irrelevant to this case.

THE COURT: It is too broad. I think you have to narrow it. You may perhaps lead a very little bit.

Q Mr.Sheehan, do the shop stewards file reports with the local when there are disputes as to non-union people working at a union site?

A They do.

Q And where are these reports filed?

A Well, it is mostly verbal reports.

Q Are there written reports filed?

A There are sometimes.

Q And where are they filed, sir?

A They put them in the employer's folder.

Q I show you Government's Exhibit 109 for identification and ask you if you recognize it, sir.

A Yes, I do.

Q And what is it, sir?

A This is the folder that the union has for keeping the employers' contracts and any pertinent information that may come into the office.

Q Did you personally remove that folder from its filing cabinet?

A I did.

Q When you removed it from the filing cabinet, what, if anything, was inside that folder?

A The contract.

Q And that's Government's Exhibit--

A Exhibit 110.

Q Was there anything else in that folder, sir?

A That is all.

Q Mr. Sheehan, did you examine the books and records of your local to determine whether or not there were any pension and welfare benefits paid by Paterno & Sons, Inc. on behalf of people who were working for that corporation?

A I did.

MR. ROSENTHAL: Now, your Honor--

MR. BRILL: I think, your Honor, that we are

going far afield. I object to it as neither relevant nor material to the issues in this case.

MR. SILVERMAN: The government is seeking to prove whether or not these named individuals who were working at the time for this corporation Paterno & Sons, Inc. at the Carmel job site which was one of the job sites in this jurisdiction -

MR. BRILL: That's an assumption, your Honor. They weren't working for them. They were independent truckers.

THE COURT: Now, Mr. Brill, you don't know what they were. You are not a witness.

MR. BRILL: That's correct, sir. He is not either.

THE COURT: Don't make statements of fact. He just said what the government is trying to show -- he didn't say what the fact is. That's quite different.

Objection overruled.

BY MR. SILVERMAN:

Q Mr. Sheehan, I show you Government's Exhibit 111, 112, 113, 114 and 115, and ask you what they are, sir.

A These are the reporting forms which we supply to the employer for the reporting of his welfare-pension contributions that he is obligated under his contract.

Q And do they enumerate the amount of moneys

received by the local from this contractor?

A They do.

Q What contractor do they all refer to, sir?

A Paterno & Sons, Inc.

Q And are these records maintained in the regular course of the business by the local?

A They are.

Q And was it the regular course of business that the local lists the information on these forms at the time they receive the information?

A Yes.

Q Now, will you examine these exhibits, Government's Exhibits 111 through 115 and state whether or not there were any payments received from any of the five named individuals that I have questioned you about, sir?

A Paterno & Sons --

MR. BRILL: This is objected to, if your Honor please, within the same grounds.

THE COURT: Yes, it could perhaps be the subject of a stipulation which would save some trouble, but in any event, since we have had this colloquy, let me just labor the obvious for a minute.

It is clear by now what the government's claim is in this case. The government isn't claiming that any

of these five names are the names of people who worked for Paterno & Sons, Inc.

The government claims that it will be able to prove beyond a reasonable doubt, and it is going to be up to you to decide whether it has, that these five names are the names of non-existent people.

I am only allowing this evidence in the record, as I understand it, on the government's representation that as part of its burden, will undertake to negate the possibility that they were employees of Paterno & Sons, Inc.

Is that a fair statement of your contention on this?

MR. SILVERMAN: Yes, your Honor.

THE COURT: That's all I am allowing for. And on that basis, with that limited understanding of its limited purpose, I have overruled the objection of Mr. Brill and I assume Mr. Rosenthal joins in that objection.

All right.

MR. SILVERMAN: I believe there is an unanswered question, your Honor, at this point.

THE COURT: What is the question, whether any payments were received by the union for and on behalf?

MR. SILVERMAN: Yes.

THE COURT: Do you understand the question?

THE WITNESS: Yes.

A The payments received were all from Paterno & Sons.

Q Were they made on behalf -- by examining these documents-- of any of the individuals named: Aurrichio, Catenzaro, Tuccella, Ferrotta and Lazravitch?

A No.

MR. SILVERMAN: I have no further questions, your Honor.

At this time, I would like to offer in evidence Government's Exhibits 111 through 115.

THE COURT: And I take it they are offered for the purpose that we have just been talking about?

MR. SILVERMAN: Yes, your Honor.

THE COURT: All right, show them to counsel.

MR. BRILL: Thank you.

And may I see the other one, 110?

MR. SILVERMAN: Yes. (Handing.)

THE COURT: Is there any objection to the exhibits?

MR. BRILL: I am just looking at one of these, Judge. I have not seen these before.

I object to them on the same ground that I have already urged upon your Honor and I will save for my cross-

examination questions with respect to these exhibits, 109 -- is 109 offered, Mr. Silverman? 109 through 115, I think it is.

THE COURT: All right, they will be received.

xx (Goverment's Exhibits 111 through 115 received in evidence.)

MR. ROSENTHAL: Do I understand, your Honor, they are being offered with respect to the defendant Paterno & Sons,Inc., and the defendant Michael Paterno?

THE COURT: I have received them generally for the limited purpose I stated to you and the jury, and insofar as that has any bearing on any of the defendants, the jury will be permitted to consider it.

MR. ROSENTHAL: I respectfully except.

CROSS-EXAMINATION BY MR. ROSENTHAL:

Q Mr. Sheehan, dealing first with Exhibits 111 to 115, the persons whose names are listed on these exhibits or were at the time for which these exhibits were made, employees on the payroll of Paterno & Sons, Inc., isn't that correct, sir?

A That's correct.

Q And only for such employees?

A True.

Q Isn't that correct?

A That's correct.

Q Now, neither the union nor the welfare and pension fund, to your knowledge, ever had any complaint about compliance with the obligations under its agreement with the union on the part of Paterno & Sons, Incorporated, isn't that true?

A That's correct.

Q Have you ever personally met Michael Paterno?

A I think I may have seen him up in the office; whether I met him personally or not I am not sure.

Q Would that have been at the time when this agreement, which is Exhibit 110, was signed in 1964?

A I couldn't say if it was then or at some other time. His face does look familiar. If I seen him up there it would be in the union office.

Q All right.

Did you at any time or to your knowledge, any member, any officer of the local union, complain to Paterno & Sons, Incorporated or any of its officers with respect to their failure to comply with any of the provisions of the agreement, Exhibit 110?

A I have no recollection.

Q I beg your pardon?

A I have no recollection that there was any complaint from anybody.

Q From the file which you produced which was the union file concerning Paterno & Sons, Inc., you would have to say, would you not, that there were none, isn't that true?

A There were not.

Q And there is no correspondence with respect to any such matter, is there?

A It is true.

Q Now, there are independent contractors who are under the jurisdiction of Local 456 in Westchester and Putnam Counties, are there not?

A Well, if they have signed the contract. I don't know what you mean by the independent contractors.

Q Are you familiar with Cross-County Trucking, for example?

A Yes, sir.

Q Do you know a person who is the owner of that company or all the stock of that company?

A I wouldn't know who is the complete owner or who owns the stock but--

Q Do you know a man named Cimino?

A Raymond Cimino?

Q Right.

A Yes, I do.

Q Do you know him to be the steward of Cross County Trucking, the shop steward of the union for Cross County Trucking-- excuse me, I didn't put the question correctly.

A You mean is he, or was he?

Q Yes.

Did you know him to be the shop steward in 1965 or 1967?

A I believe he was.

am

Q Now, did you know that at that time he was really the owner of the truck which he was operating, and while he was the shop steward?

A We had no knowledge of it at the time.

Q Have you since learned about it?

A Yes, we did.

Q Have you taken some steps?

A He is no longer a member of the union.

Q Mr. Sheehan, under the arrangements between local unions of the International Brotherhood of Teamsters, is there a reciprocity between local unions having jurisdiction in one area and local unions having jurisdiction in another area, both of which do the same kind of work?

A I am not sure if I have your question clear in my mind. Reciprocity as far as the work goes or the welfare?

Q Yes.

A Well, as far as the work goes, each local takes care of its own jurisdiction.

Q Does it occur, and did it occur to your knowledge since you have been connected with Local 456 that members of other locals working for truckers have been permitted to work for a probationary or a limited period within the

jurisdiction of your local?

A There have been occasions of that, yes.

Q And members of your union, for example, can come down here to south of the Westchester line and work in the five boroughs and Nassau and Suffolk, can't they, under such an arrangement?

A Very, very seldom.

Q But they can?

A I don't think they can.

Q Is there not, actually, a period during which they are permitted to work for so many consecutive days at a time?

A Well, pemitted --

Q Within the jurisdiction of another local but within the International Brotherhood of Teamsters?

A No, they can't work under the jurisdiction of another local.

Q They work under the jurisdiction of another local --

A They have to work under the jurisdiction of their own local, 456.

Q Their own local?

A Yes.

Q And they may work under the geographical jurisdiction of another local for a limited period of time?

A They may work outside the jurisdiction of Local 456, say. New York City, Rockland County, Duchess, but they are still under the control or the jurisdiction of Local 456.

Q Right, and vice versa? If they come from another local and work under your jurisdiction, they are still under the control of the other local of which they are members, or under their jurisdiction?

A Right.

MR. BRILL: Thank you.

CROSS EXAMINATION

BY MR. ROSENTHAL:

Q Mr. Sheehan, do you have in front of you the reports from Paterno & Sons with respect to the Welfare Fund?

A Yes, I do.

Q Is there any indication there that there was a worker by the name of Raymond Cimino?

A No, there is not.

Q Is there any indication there, sir, that there was a worker by the name of James Caposselo, C-a-p-o-s-s-e-l-o?

A There isnot.

Q Now, if Raymond Cimino was employed by Cross County Trucking, and Cross County Trucking was, in turn, employed by Paterno & Sons, Inc., it would not be

the duty of Paterno & Sons to report Mr. Cimino's wages and to make any payments to the welfare or pension fund, would it?

A That is true.

Q It would be the duty of Cross County?

A Yes.

Q And if James Caposselo, who was doing business as B&C Trucking, had been employed by Paterno & Sons to do some trucking for them, and he and other people working for him or through him did trucking, would it be the duty of Paterno & Sons to put their name on their pension and welfare fund?

A No.

Q Now, by the same token, sir, if a John Aurrichio or an Arthur Lazravitch, or a Frank Ferrotta, or a Michael Catenzaro, or a Thomas Tuccella supplied trucks and drivers for Paterno & Sons and billed Paterno & Sons for the trucks and drivers they supplied, would it be necessary for Paterno & Sons to pay pension and welfare fund on these drivers?

A No, sir.

Q Or on these names that I have mentioned?

A No, sir.

Q So that your search of the records to find out

whether or not the five names I just mentioned, Michael Catenzaro, John Aurrichio, Arthur Lazravitch, Frank Ferrotta and Thomas Tuccella -- your search of the records to find out whether or not Paterno & Sons had paid any welfare or pension fund for them, or whether these men had, in fact, paid any union dues to Local 456, would not indicate whether or not these men had had trucks that were working for Paterno & Sons, would it?

A It would not.

Q And is there such a thing as a truck broker; I mean a man who actually arranges for different truckers to do work for different construction companies?

A There may be. Not to my knowledge.

Q Well, there is no provision in your labor agreement for such a person, is there?

A No, sir.

Q And he would not be a signatory with your union --

THE COURT: Wait a minute. He said he didn't know whether there was such things.

Do you know whether there are such things?

THE WITNESS: I don't know.

THE COURT: And you can't ask him what they can't or don't do.

BY MR. ROSENTHAL:

Q I think you told us that Mr. Cimino was no longer a member of your local?

A That is true.

Q Do you know whether he is still in the trucking business?

A He is.

Q And is he trucking in the jurisdiction of your local?

A He is.

Q And do you know whether or not he personally is driving a truck any longer?

A I don't believe he is.

Q And so long as he is not driving a truck personally your local would not require him to be a member?

A No, we don't have owner drivers in the union.

Q I appreciate that, sir, but supposing my wife owned a truck and I drove for her, if I could drive, I, as the driver or employee of my wife would have to be a member of your union, right?

A True.

Q And by the same token where Mr. Cimino, a good union man, who was the shop steward but who was using a subterfuge in his company, if he worked for a corporation

over which he had no control or interest whatsoever, and he physically drove a truck, it would then be a requirement that he belong to your union?

A True.

Q And since he is not, to the best of your knowledge and information, presently driving a truck, there is no requirement?

A That is true.

Q Now, sir, Cross County or Mr. Cimino, whichever title you want to call him by, hired some other truckers -- I think a DeMarco, Mario Dellarco, and another name -- I don't recall the name -- anyway those people working for Cross County, in turn working for Paterno & Sons, Inc., would there be any requirement for Paterno & Sons, Inc. to pay social or welfare fund for them?

A No, sir.

Q And you would not expect to find their names in your reports, would you?

A That is true.

MR. ROSENTHAL: I have no other questions, your Honor.

MR. SILVERMAN: One question, Mr. Sheehan.

REDIRECT EXAMINATION

BY MR. SILVERMAN:

Q In a situation where someone who is a union member of Local 282 wants to work in the jurisdiction of Local 456, must he do so with or without the permission of Local 456?

A He has to, yes.

Q Excuse me?

A Yes.

THE COURT: Anything else, gentlemen?

(No response.)

THE COURT: All right, Mr. Sheehan. Thank you.

(Witness excused.)

M A E N U N K I N, a witness called in behalf of the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SILVERMAN:

Q Miss Nunkin, could I please request that you keep your voice up so that the people in the back will be able to hear you?

A Yes.

Q What is your full name?

A Mae Nunkin.

Q And what is your present occupation?

A Clerk.

Q And where are you presently employed?

A Madison Avenue Hospital.

Q And where is that located, here in New York?

A 30 East 76th Street, New York.

Q What is your position with Madison Avenue Hospital?

A What do I do?

Q Yes, ma'am.

A I do payroll.

Q What are your other responsibilities?

A Accounts payable; personnel problems.

Q Are you familiar with the firm of Paterno & Sons, Inc.?

A Yes.

Q How are you familiar with them?

A I worked for them.

Q Did you work for them during the period approximately the spring of 1968 till the summer of 1970?

A Yes.

Q And who hired you for the position at Paterno & Sons, Inc.?

A I believe George Denti -- it was a combination of George Denti and Louise Ferraro at the time, I think.

I am not too clear on it.

Q What was your position with the firm of Paterno & Sons, Inc.?

A I was more or less secretary.

Q What did that responsibility include? What type of work did you perform as secretary?

A I did mostly all of the typing; I helped the bookkeeper with little odds and ends, not going into the bookkeeping end of it, because I am not a bookkeeper; I did whatever was asked of me.

a.m.

Q Did your work include working with the invoices received by the corporation?

A No.

Q Did your work include making entries in the cash books or the general ledger?

A No.

Q Now which office of Paterno & Sons, Inc. did you work in, at which location?

A I worked on Rowe Street and worked in City Island.

Q Didyou prepare corporate checks or checks of Paterno & Sons, Inc. for the payment of their expenses?

A Did I ever?

Q Did you ever prepare as part of your responsibilities --

A No.

Q Did you ever do that on any occasion?

A On an occasion, I may have.

Q But it was not partof your general responsibilities?

A No.

Q But during the period that you worked for Paterno & Sons, Inc. at the Rowe Street office were there any other office employees?

A Yes.

Q What were the names of the people that worked

there while you were secretary at the Rowe Street office?

A Louise Ferraro -- and that's all I remember -- and myself.

Q And at the City Island office, who were the employees who worked there, the office employees at that time?

A There was Anne Altro -- any period?

Q During the period that you worked there.

A Helen Castaldo, Marie Stassollo.

Q Do you know the defendant Michael Paterno?

A Yes.

Q What was his position with the firm when you worked there?

A President.

Q And do you know the defendant George Denti?

A Yes.

Q What was his position with the firm when you worked there?

A Secretary-treasurer.

Q And do you know an individual by the name of James O'Reilly?

A Yes.

Q What was his position with the firm when you worked there?

A He was a superintendent.

Q And did you know an individual by the name of Thomas Cohill

A Yes, sir.

Q What was his position with the firm when you worked there?

A He was -- he is a superintendent but he is also-- I believe he -- I don't know what the corporate title would be, I have forgotten.

Q To your knowledge was Mr. Cohill an officer of the corporation?

A Yes.

Q Do you know an individual by the name of Joseph Denti?

A Yes.

Q What was his position with the firm when you worked there?

A He was an operator.

Q What do you mean by "an operator?"

A He operated a machine -- an oiler -- I believe he was an oiler or an oiler operator of machines.

Q In other words, he operated equipment.

A Yes, the equipment.

Q Do you know whether there is any relationship between Joseph Denti and George Denti, the defendant?

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A Yes, they are brothers.

Q Now as a secretary who worked for this particular firm, did you maintain any telephone record of suppliers and sub-contractors --

A Yes.

Q -- and other business people who did work for Paterno & Sons, Inc.?

A Yes.

Q On what type of apparatus was that kept?

A I had a Rolidex.

Q Other than the Rolidex did you maintain a separate list of truckers who performed services for Paterno & Sons, Inc.?

A I believe there was one list.

Q What is your best recollection?

A There was a list but there may have been others singly listed, I assume.

Q But they were truckers?

A Yes, there was a list that said "trucks" and there were names on it, yes.

Q On the Rolidex did you have the names on the Rolidex of truckers who worked for Paterno & Sons, Inc.?

A They may have.

Q My question is -- they may have or they may not

have, but what is your best recollection as to whether there were truckers' names on this Rolidex?

A There were truckers' names, yes.

Q Were you ever requested, while you were a secretary of Paterno & Sons, Inc., to call truckers who worked for Paterno & Sons, Inc.?

A Yes.

Q And by whom were you requested to make these telephone calls?

A It could have been by the superintendents on the job, mostly.

Q Were you ever requested by Mr. Denti to call for truckers?

A I may have.

Q What is your best recollection?

A I may have. That is the best I can do -- I may have. It would mostly come from out on the job.

Q What what is your best recollection as to whether or not Mr. Denti ever requested you to call any truckers?

A You want yes or no, and if I say yes or no, I don't remember -- I mean specifically. I can't say that I was requested. I would get a phone call from a job and say "Get me a truck" or "Cancel a truck" or "Try to find me something" -- to that nature.

Q Okay.

Do you recognize the name of Sal or Teddy Minichino?

A Yes.

Q What business was he in?

A He had trucks.

Q Was he the gentleman who was affiliated with Taff Trucking?

A I didn't know the name Taff. I only knew him as Minichino.

Q You knew the name Minichino?

A Yes, I did.

Q Did you ever call his company to order trucks?

A Yes.

Q Was his name on the Rolidex?

A Yes.

Q Do you remember the name Sam LaSpina?

A Yes.

Q Do you recall what business Mr. La Spina was in?

A Trucking.

Q Did you ever call his company to order trucks?

A Yes, I may have, yes.

Q Now have you ever heard the name of a trucker by the name of John Aurrichio?

MR. BRILL: That is objected to, if your Honor please -- hearsay.

THE COURT: Overruled.

(Question read.)

A The first time I heard of it was when you people mentioned it to me.

Q While you working for Paterno & Sons, Inc.did you ever hear of a trucker by the name of John Aurrichio?

A I don't remember it, no.

Q Did you ever hear of a trucker by the name of Michael Catenzaro?

MR. BRILL: Same objection, your Honor, to this entire line.

THE COURT: The same ruling.

MR. BRILL: Thank you, sir.

Q While you were working at Paterno & Sons, Inc., did you ever hear of a trucker named Michael Catenzaro?

A I don't remember it.

Q Do you recall a trucker by the name of Anthony Ferrotta while you were working at Paterno & Sons, Inc.?

A I don't remember it.

Q Do you recall a trucker by the name of Arthur Lazravitch while you working for Paterno & Sons, Inc.?

A I don't remember that.

Q And do you recall a trucker by the name of Thomas Tuccella while you working for Paterno & Sons, Inc.?

A No, I don't remember that.

Q Do you recall if any of these names, these five names I have mentioned, were on your Rolidex?

A I don't recall that they were on or off.

Q Do you recall them being on the Rolidex?

A No.

Q Who at the firm of Paterno & Sons, Inc. while you were there had the authority to sign corporate expense checks -- payment of expenses incurred by the corporation?

A Michael Paterno.

Q Did you ever see him signing checks?

A Yes.

Q At the Rowe Street office, would you describe to us the size -- the physical size of the office?

A In my interpretation?

Q Yes, ma'am.

A It looked like a quonset hut.

Q How large was this quonset hut? Was it as large --

A Like a large trailer.

Q And how many people worked in this area of a large

trailer?

A Well, there were myself and Michael Paterno and George Denti, and there was Louise Ferraro, and there was -- there was an estimator. I don't remember which estimator was there at the time on Rowe Street, I forget.

Q Without putting words in your mouth -- I don't want to -- would you describe the condition of this trailer as being crowded?

A Yes.

Q Everybody worked fairly close together?

A Yes.

Q What were the conditions at the City Island office -- what size office was that?

A Well, that was a two-story building. It was spacious enough. We had several rooms.

Q Where was this office located --

A On the main floor.

Q On the main floor?

A Yes.

Q And the other office personnel, where were they located?

A Mr. Denti had an office next door to mine.

Michael Paterno had an office upstairs.

The estimator was upstairs, and I was in the

room with other girls who worked there.

Q And while you were working for Paterno & Sons, Inc. did you ever see Louise Ferraro or Anne Altro preparing the corporate checks?

A Yes.

Q Could you describe what procedure they would follow -- that you saw that they would follow when they prepared these checks?

A I --

MR. BRILL: Your Honor, I object to that. I am going to object to this, if your Honor please. I think there is better evidence. We already had Mrs. Altro; there has been a representation with respect to Mrs. Ferraro who I understand is outside.

MR. SILVERMAN: I don't believe the best --

THE COURT: No, it is overruled.

(Question read.)

A No, I can't describe it.

Q You never saw them preparing checks?

MR. BRILL: She didn't say that.

Q Didyou ever see them preparing checks?

A Yes.

Q What would they do immediately prior to their preparing checks?

A I wouldn't know that.

Q Mrs. Nunkin, prior to seeing me in the court building today, did you ever see me on any other prior occasion?

A Yes.

Q Where was that?

A At my office.

Q Was I with anyone at that time?

A Pardon?

Q Was I with anyone at that time?

A Yes, Mr. Ayres.

Q And at the time was that the only time that we ever discussed this case?

A You and I?

Q Yes.

A Yes.

Q Mr. Ayres was present in that whole conversation?

A Yes.

Q And at that conversation were you asked a question as to whether or not you had seen Mrs. Altro and Mrs. Ferraro preparing checks for signature?

A Yes.

Q What did you tell Mr. Ayres at that time?

A What did I tell Mr. Ayres?

Q Yes.

A You -- do you want me to tell you what happened -- I mean what the conversation was?

Q What did you tell Mr. Ayres, in response to my question as to whether or not you ever saw Louise Ferraro or Anne Altro prepare checks?

A That wasn't your question. That's not what you asked me.

Q I am asking you now, on that date did you tell Mr. Ayres whether or not you saw Anne Altro or Louise Ferraro preparing checks?

A Yes, I have seen them preparing checks.

Q What was your answer?

A Yes.

Q And at the time were you asked the question as to whether or not you saw Anne Altro or Louise Ferraro doing any work immediately prior to preparing checks?

A And I answered you --

Q I asked you whether or not you were asked that question.

MR. BRILL: May she be permitted to answer it, your Honor?

THE COURT: No. First she ought to say whether she was asked that question.

Were you?

THE WITNESS: Seeing her prepare checks --

THE COURT: No, were you asked that question? Did you hear the question, just answer yes or no?

THE WITNESS: I can't answer that. That is not what --

THE COURT: Wait. Then your answer is "no", he did not ask you that, is that right?

THE WITNESS: He did not ask it that way.

THE COURT: Oh!

THE WITNESS: That is not what he asked.

Q Didn't you tell Special Agent Walter Ayres that you saw Louise Ferraro and Anne Altro both, when they prepared checks, prior to preparing the checks pull the invoices, pull the receipts, staple the invoices to the receipts and bring them with the check to Michael Paterno?

A My answer is no.

Q You did not --

THE COURT: Let me remind you that that detailed question does not give evidence. The answer is "no".

All right.

Q You did not tell him that?

A No. That is not what you asked and that is not what I answered you.

THE COURT: Mr. Silverman, I think you had better go on.

Q Do you recall seeing any situation while you were at Paterno & Sons, Inc. where Michael Paterno signed a corporate check?

A Yes.

Q Would you describe the circumstances around him signing that check?

MR. ROSENTHAL: That is objected to, if your Honor please.

THE COURT: On what ground?

MR. ROSENTHAL: There is no time limitation. There is no indication as to what thecheck was referring to, or anything else.

THE COURT: Overruled.

MR. ROSENTHAL: I respectfully except.

(Question read.)

A Well, I wouldn't be present while he was signing several checks that may have been prepared. I may have been in his presence signing one check or an odd check that was signed in my area. The checks were not usually signed in my area if there were a large amount of accounts payable.

If it was a specific check that he had wanted and

somebody had written that check right then and there and he happened to be in the room to sign it, he would sign it. I would see him sign it. He signed checks for me.

Q At the time you saw Michael Paterno signing a corporate check was there any document with that check at that time?

A Oh, I couldn't say. I couldn't say what the check was at the time. It could have been a personal check. It could have been something personal. It could have been petty cash. It could have been something specific. I don't know what you are asking of me.

Q At the time you saw Michael Paterno signing any corporate checks were there any invoices along with the checks, next to the checks while he was signing them?

A You are asking me to tell you that there were invoices on checks that he signed that he did not sign for me particularly.

Q I am asking you whether or not you saw invoices next to the checks at the time you saw Michael Paterno signing corporate checks.

A I don't know how to answer that.

Q Do your best.

A You are asking a specific thing, an invoice. It could have been something personal for his -- for his --

it could have been for a field trial, you know. I don't know what you are driving at.

Q Did you ever hear Michael Paterno requesting backup material for the checks that he was signing?

A Yes, he would ask for some substantiation, yes, sir.

Q And what would happen? Was there a situation where a check was presented to Michael Paterno where there was no backup or substantiation, where you were present?

A Not where I was present, no.

Q Did you testify before the grand jury?

A Yes.

Q Didyou testify before the grand jury on February 8, 1973?

A Yes.

Q I ask you to lock at Government's Exhibit 3516 for identification. I ask you to look at page 7, lines 9 through 23 (handing).

(Witness examines.)

Q I ask you to read that to yourself.

A (After examining) Yes.

Q Does that refresh your recollection --

A It says "Did you hear him" --

THE COURT: Wait till you hear the question.

Q Does that refresh your recollection?

THE COURT: About what?

A Yes.

MR. SILVERMAN: As to whether or not she was ever present when Michael Paterno signed a check where there was no backup material present.

A You are asking me -- it says "Did you hear him request that backup". I personally did not present him with checks.

Q I am not asking you that.

A If he didn't have a backup or a substantiation nine times out of ten he would start yelling for it, he won't sign it because he has nothing to substantiate it one way or another.

Q Thank you.

MR.SILVERMAN: Your Honor, may I approach the side bar at this time, please?

THE COURT: Yes.

(At the side bar.)

MR.SILVERMAN: Your Honor, I can appreciate and understand the strain that a defendant is undergoing when he is on trial, but I cannot tolerate the fact that the defendant Michael Paterno continually, when the witness testifies, at his pleasure or displeasure making motions

to other people at the counsel table, making faces or looking at the jury in a way that would contest the credibility or uncredibility of the witness on the stand. The Court has warned him beforehand, and I noticed on several occasions yesterday but I did not say anything. That compels me to bring it to the Court's attention.

THE COURT: It has come to my attention or observation.

MR. BRILL: I haven't seen it.

THE COURT: Well, I have seen him. He smiles, he grimmaces. His wife also joins in these gestures. You had better warn them or I will throw them out of the courtroom.

MR. BRILL: I will, but I have not seen it.

THE COURT: I just told you --

MR. BRILL: I understand.

THE COURT: Let the record show that your observation that you haven't seen him is of no help to the Court since you are sitting directly in front of him --

MR. BRILL: True.

THE COURT: -- and the back of your head is towards him.

MR. BRILL: True.

THE COURT: It is not astonishing that you haven't

seen it. See that he behaves and observes it.

You had better move him up close to you.

MR. BRILL: I will do the best I can.

MR. ROSENTHAL: Judge, I think the record should also reflect this, the last time Mr. Silverman mentioned it, I think Mr. Paterno motioned to his wife --

THE COURT: Mr. Silverman never mentioned it before. I may have raised it of my own motion.

MR. ROSENTHAL: I am sorry, your Honor -- I understand on that particular occasion the defendant Paterno had dropped from his pocket a wallet containing credit cards --

THE COURT: I am not interested in your understanding. I have observed a long course of behavior. I do not make this kind of side bar junket after one episode, but he has been doing that continually, and I called you up here to have Mr. Brill caution him.

Don't tell me of your understanding about a different thing -- it doesn't help me.

MR. ROSENTHAL: I do not say that, your Honor --

THE COURT: Well, don't tell me about your understanding. Mine is not hearsay. Mine is a direct line of vision or observation, and he had better stop it.

MR. SILVERMAN: Thank you, your Honor.

(In open court.)

Q Miss Nunkin, I show you Government's Exhibit for identification 99, 100, 101, 102, 103, 104, 123, 128 and 129, and ask you if any of those exhibits are in your handwriting?

A All except these (indicating).

These are not my handwriting.

Q 128 and 129 are not in your handwriting and the others all are?

A Yes.

Q What type of documents are those exhibits, if you know?

A These are payrolls, the specific jobs that were being done. That has to be submitted.

Q And what particular job or jobs do they refer to?

Would you look at them, please?

A Well, this one is Johnson Avenue.

Q What number is that?

A Pardon?

Q What number is that?

A 123 is Johnson Avenue.

99 is Cedarhurst.

100 is Cedarhurst.

101 is Cedarhurst.

102, Cedarhurst.

103, Cedarhurst.

104, Cedarhurst.

That's it.

Q These documents were all prepared by you?

A These were, yes.

Q And from what source or sources did you get the information to prepare these documents?

A Company payroll.

Q Payroll of what firm?

A Of Paterno & Sons.

Q And did these forms all relate to jobs at which Paterno & Sons, Inc. were working?

A Yes.

Q And after you prepared these forms, were they signed by anyone?

A Yes.

Q And who were they signed by?

A George Denti.

Q Were they all signed by George Denti?

A These were, yes.

Q And does it designate on the form a section as to whether under what title Mr. Denti was signing?

A Secretary-treasurer.

Q Secretary-treasurer of the corporation of Paterno & Sons, Inc., is that right?

A Yes.

Q And after these documents were prepared and after these documents were signed, do you know what happened to them?

A Yes, I submitted them.

Q Where did you submit them to?

A To the owner of the job, so to speak, whatever town or city or whatever it was.

Q With reference to Government's Exhibit 123, the Johnson Avenue job, who was this document submitted to?

A It was the Department of Public Works.

Q City of New York?

A Yes.

Q And in reference to documents 99, Government's Exhibits, excuse me, 99 through 104 for identification, to what city or municipality were they submitted?

A I think it was called the Town of Cedarhurst, something like that.

MR. SILVERMAN: The government at this time would like to offer in evidence Exhibits 99 through 104, and 123.

MR. BRILL: I see no relevancy, your Honor,

with respect to these payrolls in connection with the issues before the Court.

If there is to be any discussion with respect to it, it should be at the side bar, I respectfully submit.

THE COURT: I will hear you, why is it relevant?

MR. SILVERMAN: These payroll sheets cover the jobs that Paterno & Sons, Inc. have worked at.

We will be producing witnesses, both the superintendent of Paterno & Sons, Inc. and the City inspector and the resident engineer of both those sits who will testify that on those particular days, there was no work going on at those sites.

They are these same days when the truckers were supposedly working at those particular sites as listed on the invoice and the payroll records, your Honor, indicate the number of employees working on those particular sites at those particular days as required by both the City and the Village of Cedarhurst.

THE COURT: And you claim the payrolls will support your contention that there was no work on particular days?

MR. SILVERMAN: Yes, your Honor.

THE COURT: All right, I will allow them for that purpose, and any other purpose, signatures and things.

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(bjection overruled.

(Government's Exhibits 99 through 104 and 123 received in evidence.)

MR. BRILL: Will your Honor entertain us at the side bar for a moment?

THE COURT: No.

MR. BRILL: I want to make a motion.

THE COURT: You make it later. Save it.

Let's proceed.

Q Miss Nunkin, do you recognize the handwriting on the other two documents that you have in front of you, that is, 128 and 129?

A I'd be guessing.

Q Whose handwriting do you think it is?

A I think it is Helen Castaldo.

MR. SILVERMAN: I have no further questions, your Honor.

THE COURT: Cross-examination?

a.m.

MR. BRILL: Could we have that copy of 3516 to hand to the witness?

MR.SILVERMAN: Yes (handing).

CROSS EXAMINATION

BY MR. BRILL:

Q Is it Miss or Mrs. Nunkin?

A Miss.

Q Miss Nunkin, your attention was invited to page 7 of the document before you now, 3516, and you were asked to look at and read to yourself, I think, beginning at line 9, do you recall that?

A Yes.

Q Now immediately before line 9, beginning at lines 2 to 8 inclusive, and on the preceding page, page 6, beginning at line 21 to line 25 inclusive, did that relate to the same subject matter about which you were asked?

A Yes.

MR.SILVERMAN: Objection, your Honor; an improper way to use grand jury testimony.

MR. BRILL: I can't hear Mr. Silverman.

THE COURT: I will allow it.

The answer is yes?

THE WITNESS: Yes.

THE COURT: Go ahead, Mr. Brill.

Q Now at that time when you were questioned before the grand jury on February 8, 1973 were you questioned by another prosecutor, a person other than Mr. Silverman?

A Yes.

Q And did he ask you the same questions, in substance, that Mr. Silverman asked?

A Yes.

MR. SILVERMAN: Objection, your Honor.

THE COURT: What is the ground of the objection?

MR. SILVERMAN: It is an improper use of grand jury material.

THE COURT: Are you planning to show prior inconsistent testimony?

MR. BRILL: Not inconsistent. I want to complete, if your Honor pleases, what her testimony was with respect to this particular subject matter.

THE COURT: Well, ask her.

None of the grand jury testimony was read, to my recollection. Just ask her about the fact; don't ask her about the grand jury testimony.

Q Willyou read those portions that I have just addressed to your attention, Miss Nunkin, to yourself?

A Yes?

Q All right.

Now, did you observe, physically observe Mr. Paterno signing checks while you were working for Paterno & Sons, Inc.?

A Yes.

Q On occasion?

A Yes.

Q Did you see him, physically see him sign large batches of checks?

A I may have.

Q How were they brought to him?

A They were usually brought up in one batch either in a folder -- most times they were brought upstairs.

Q To his office?

A To his office.

Q And did you hear what he asked for at the time when he would sign a check?

A No, I was downstairs. I wouldn't hear that.

Q Did you everhear him ask for backup or substantiating material before he would sign a check?

A Not in those words.

Q What were the words that you heard, in substance?

A Well, I would hear occasionally "This thing is not signed" -- something wasn't signed, or it didn't have

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an okay on it, let's say.

Q All right. To your knowledge would Mr. Paterno and did Mr. Paterno -- Michael Paterno I am talking about -- sign anything without substantiation for that check?

A Did I observe?

Q Yes.

A How could I -- I can't answer that.

Q Did it come to your attention while you were working there --

A Not specifically to my attention.

Q Generally did it come to your attention that he would not sign a check unless there was backup or substantiating material?

A I wouldn't say that, no.

Q You wouldn't say that?

A That he would sign a check without something behind it?

Q Yes.

A Yes, he would.

Q I am talking about checks for the payment of the obligations of the corporation, not personal matters.

A Well, that was not my area. That was not my job, sir.

Q Well, do you remember that you were asked before

the grand jury, on page 7 , line 15 --

MR.SILVERMAN: Objection, your Honor.

Is this for impeachment purposes?

MR. BRILL: Is it for what?

MR. SILVERMAN: Is it for impeachment purposes that he is reading the grand jury testimony?

THE COURT: He wants to know if it is for impeachment purposes.

MR. BRILL: It is to bring to her attention what she said at the time before the grand jury which is not consistent with what she has just now said.

THE COURT: All right. I will allow that.

Q Do you remember being asked this question, which was one of those Mr. Silverman asked you to read:

"Q In fact, did you observe that he followed a very careful procedure of making sure there was backup material?

"A He would never sign anything that he couldn't substantiate."

Do you remember that?

A I remember it, yes.

Q Did you make that answer to that question?

A That was hastily answered.

Q Hastily answered?

A Yes, I think so.

Q Is it not true?

A It is true, yes, but if you're asking me specifically for certain --

Q No, not specifically -- excuse me for interrupting -- go on and finish your answer.

A There were occasions I guess he would sign checks with nothing behind it. He would ask for a specific check himself -- I mean for whatever reason; it didn't have to be paying a bill.

Q That is what I am talking about. With respect to bills from vendors --

A That was really not my area.

Q Well, to your knowledge, what you observed and saw or heard, did he or would he sign a check to a vendor or one who performed service for the corporation without having substantiation for the check?

A I would say no.

Q As a matter of fact, did you ever hear him yell or shout at one of the bookkeepers for failing to present him with such backup material?

A No.

Q Now, the Rolidex file that was on your desk --

was that your personal property?

A Yes, it was.

Q And did you keep it for your own convenience?

A Yes.

Q Did you list on it or have a card in it for every trucker with which or with whom Paterno & Sons, Inc. did business?

A No.

Q Is it true that there are many truckers with whom Paterno & Sons did business whose names you cannot recall?

A Yes.

Q Do you know whether or not Mike Paterno went out to job sites?

A Yes.

Q And when he would do that would he notify you or someone else in your office, to your knowledge, that he was going to a particular job site?

A Yes.

Q Do you know or do you have a recollection of the frequency with which he went to job sites?

A I couldn't positively say.

Q Okay.

I show you Exhibits 1-A, 2-A, 3-A, 4-A, 5-A, 6-A, 7-A, 8-A, 9-A, 10-A, 11-A, 12-A, 14-A -- which is the next

one in sequence -- 15-A, 16-A, 17-A, 18-A, 19-A, 20-A, 21-A, 22-A, 23-A, 24-A, 25-A, 26-A, 27-A, 28-A -- and the next one in sequence is 30-A, 31-A, 32-A, 33-A, 34-A -- and the next one in sequence is 36-A, 37-A, 38-A, 39-A, 40-A, 41-A, 42-A, 43-A, 44-A, 45-A, 46-A and 47-A.

Have these been shown to you before, Miss Nunkin?

A Not all of them.

Q Did you type any of those exhibits which I have shown you?

A No, not that I remember.

Q Do you recognize the type on those exhibits as being the type on the typewriter that you used?

A No.

MR. BRILL: I think that is all. Thank you.

CROSS EXAMINATION

BY MR. ROSENTHAL:

Q Miss Nunkin, before you started to work for Paterno & Sons, Inc. did you work in an office immediately adjacent to their office?

A Yes.

Q In fact, this building that you have described as being somewhat similar to a --

A Quonset hut.

Q -- quonset hurt, was really two buildings,

wasn't it; a fairly new building in the front and a really old building in the back with a common hallway in between from the side?

A Yes.

Q And you worked for a firm by the name of Kady?

A Cody.

Q Cody & Company?

A Yes.

Q And they occupied the sumptuous front part of this quonset hut building, right?

A Yes.

Q And Paterno & Sons when you first went to work for Cody were in the rear portion or in the older building?

A In the front.

Q What

A I believe we were in the front. We called it the front of the building.

Q You would call it the front?

A Yes.

Q Who was in the front?

A Cody.

Q Cody, and I say Paterno & Sons were in the rear portion?

A Yes.

Q And also was there another firm in that portion together with Paterno & Sons?

A Not that I remember.

Q Do you remember the name Denti Brothers?

A Oh, yes; yes.

Q Contractors?

A Yes.

Q Or rental equipment, I am not certain which.

A Yes?

Q There were really two firms, Paterno & Sons and Denti Brothers in the other part; is that correct?

A If it was still in existence. I didn't know Denti was still in existence at that time, whether it was still active.

Q In fact, when you came to work for Cody & Company you replaced the young lady that George Denti married, didn't you?

A Yes.

Q And there came a time when Cody & Company went out of business?

A Right.

Q And that is when you went to work for the first time for Paterno & Sons?

A Not because they went out of business, no.

Q No. I said after they went out of business you went to work for Paterno & Sons, or right about the same time?

A Around that time. Around that time.

Q And there came a time, then, when Paterno & Sons moved to the part of the building occupied by Cody, is that right?

A Yes.

Q And you did have a little more space then, did you?

A Yes.

Q In fact, the girls had a private office, and there was another office, was there not, occupied by George Denti together with desks where Jimmy O'Reilly and Tom Cohill sat?

A I believe so, yes.

Q And there was another private office in front of the entire layout --

A Yes.

Q -- which Mike Paterno occupied, right?

A Yes.

Q And then there was another office across the hall-way that was occupied by the estimator?

A Yes.

Q Do you remember what his name was at that time?

A I don't remember whether Nick Rambone was there at that time. I just don't remember.

Q Incidentally, Mr. Silverman asked you a little while ago about an interview, conference, or I don't know what title you would give it -- anyway, there was a time when you spoke with him and Mr. Ayres?

A Yes.

Q It was, I think you said, within the last few days or so?

A Within the last few weeks.

Q Now, while you were speaking with Mr. Silverman or Mr. Ayres, did Mr. Silverman make any notes that you recall concerning what he asked you and what Mr. Ayres asked you and what you replied?

A He didn't make any notes.

Q You didn't notice him making any notations?

A No.

Q Did you notice if Mr. Ayres did?

A No -- Mr. Ayres may have; he may have written something down, I don't know; I really don't remember.

Q Was Mr.Rizzo present at that time?

A No, not at that time.

MR. ROSENTHAL: I have no other questions.

THE COURT: Is there any redirect?

MR. SILVERMAN: No redirect.

MR. ROSENTHAL: Oh, one question my client reminded me that I forgot to ask. In fact, I forgot to ask two questions.

THE COURT: All right.

BY MR. ROSENTHAL:

Q The payroll checks could be and were signed by George Denti, weren't they?

A Sometimes.

Q Do you know whether or not George Denti was authorized to sign overall checks of the Paternos.

A No.

Q He was not, is that correct?

A No.

Q Now, there has been introduced in evidence here just a little while ago Exhibits 99 to 104 and 123. 123 is a report concerning Johnson Avenue, is that correct?

A Yes.

Q And 99 to 104 are reports, payroll reports concerning Cedarhurst?

A Yes.

Q Now, was there any obligation on the part of Paterno & Sons to report with respect to Johnson Avenue work done for anyone other than the city?

A No, only that particular job.

Q Do you know that in doing work there was also work done for utility companies?

A Yes.

Q When involved in the work for the utility companies, would they be on the payroll reports of a municipality?

A No.

Q Such as Cedarhurst?

A No.

Q Or the one with respect to Johnson Avenue?

A No.

Q So that if there were men working there other than those working on the work involved with the particular municipality, that would not be reflected in these payroll records?

A No.

Q Or reports?

A I was not required.

Q It was not required?

A No.

MR. ROSENTHAL: Thank you, Miss Nunkin.

THE COURT: Anything else, gentlemen?

MR. SILVERMAN: No, your Honor.

THE COURT: All right.

(Witness excused.)

THE COURT: Why don't you come to the side bar while the next witness is coming, Mr. Brill, so you can make that motion you had.

am (At the side bar.)

MR. BRILL: First I want to move to strike all the testimony given by this witness --

THE COURT: By whom?

MR. BRILL: By this witness, Miss Nunkin, with respect to the payroll reports and these exhibits which have been received, beginning with 99 through that series, and including the Johnson Avenue payroll report, on the ground that they are not within the issues and within the scope of this indictment.

THE COURT: Okay. Is that all of your motion?

MR. BRILL: That is one motion.

THE COURT: Well, I want you to finish -- you sounded as though you had a rising inflection.

MR. BRILL: Yes.

THE COURT: Well, that motion is denied.

MR. BRILL: In view of your Honor's denial I respectfully move for the withdrawal of a juror and a declaration of a mistrial on the basis of statements made by the prosecutor, responsive to your Honor's request

that he state the purpose for the testimony after I requested it be done at the side bar, with respect to the payroll reports, which, as I have already urged upon your Honor, do not, within my view, come within the scope of the indictment and the charges -- and of course, as part of that, if your Honor grants that motion, which I hope your Honor will do, although reluctantly I make it, I ask your Honor to instruct the jury to disregard that testimony and that evidence.

MR. ROSENTHAL: I join in the application with Mr. Brill.

THE COURT: Denied.

MR. BRILL: Thank you, sir.

(In open court.)

R O S E M U S C A T E L L O, called as a witness by the government, being first duly sworn, testified as follows.

DIRECT EXAMINATION

BY MR. SILVERMAN:

Q Mrs. Muscatello, I please request that you keep your voice up so that the people in the back will be able to hear you.

A Okay.

Q What is your present occupation?

A Head teller.

Q And where are you employed?

A Security National Bank.

Q And which branch are you located at? What is the location?

A 326 East 149th Street.

Q And that was formerly the Royal National Bank?

A Yes.

Q How long have you been employed at both those banks together?

A In July it will be 20 years.

Q Now presently are you teller No. 1?

A Yes.

Q You are the head teller?

A Yes.

Q Prior to becoming head teller No. 1 what teller were you?

A No. 2.

Q And when did that switch occur?

A June of '66.

Q When you became teller No. 1 did Mrs. Weisenberg become teller No. 2 at the same time?

A Yes.

Q And you have been continuously teller No. 2 or

teller No. 1 during the last ten years or so?

A Yes.

Q When you cash checks at the bank is there a teller's number that is affixed to the check that you cash?

A Yes, there is.

Q During the time you have been teller No. 1 what number has been affixed to that check?

A Teller No. 1.

Q No. 1, is that correct?

A Right.

Q And included in that stamp is there also the name of the branch and the date?

A There isa branch letter, date, and just the initials of the bank.

Q And during the time when you were teller No. 2 you affixed No. 2 to those checks, is that correct?

A Yes.

Q During the time that you were both tellers 1 and 2, and then teller No. 1, who were the officers -- the bank officers at that branch?

A Well, Mr. Hoffmann I know of, and then Mr. Colantino.

Q Are you familiar with a gentleman by the name of Mr. Andretta?

A Yes, I am.

Q Was he an officer at the time that you were a teller at that bank?

A I amnot sure if he was or not, but I know of him.

Q Did he work at that branch?

A Yes.

Q And do you know what his title was at that branch?

A No.

Q Are you familiar with the name of a firm known as Paterno & Sons, Inc.?

A Yes, I am.

Q And howare you familiar with that firm?

A They are one of our customers.

Q Do you know the defendant Michael Paterno?

A Yes, I do.

Q And have you ever met or spoken to him?

A Yes.

Q Do you know the defendant George Denti?

A I am not sure.

Q The gentleman sitting over here on the right, with the light jacket, have you ever seen that gentleman before?

A Yes.

Q Prior to my telling you that his name was George

Denti did you know him as George Denti?

A No.

Q I would like you to examine certain of the checks that are in front of you, and I will call out the numbers, and I would like you to look at them.

No. 2.

(Witness examines.)

Q No. 5.

(Witness examines.)

Q Before I go through all of them, my question as to these checks that I will be asking you, is whether or not you cashed these checks, so after we get done with each one just respond to me by saying "Yes, I cashed it" or "No, I did not" -- okay?

A Okay.

Q Check No. 2.

A Yes.

Q 5.

A Yes.

Q 6?

A Yes.

Q 8?

A Yes.

Q 9?

A Yes.

Q 10?

A Yes.

Q 11?

A Yes.

Q 12?

A Yes.

Q 13?

A Yes.

Q 16?

A Yes.

Q 17?

A Yes.

Q 18?

A Yes.

Q 19?

A Yes.

Q 20?

A Yes.

Q 22?

A Yes.

Q 23?

A Yes.

Q 25?

A Yes.

Q 27?

A Yes.

Q 28?

A Yes.

Q 30?

A Yes.

Q 31?

A Yes.

Q 34?

A Yes.

Q 37?

A Yes.

Q 40?

A Yes.

Q 46?

A Yes.

Q 47?

A Yes.

Q And 48?

A Yes.

Q By examining those checks are you able to determine whether or not those checks were cashed or deposited?

A They were all cashed.

Q How did you make that determination?

A By my teller number being on the front of the check.

Q Did you examine also the back of those checks?

A Yes.

Q Was there any writing on those checks that would indicate to you whether or not those checks were cashed?

A Yes.

Q What writing is that?

A Breakdown of the money that was given out.

Q Okay.

Now I would like you to look at checks numbers 11, 22 and 25, and ask you whether or not these three checks, which are three of the ones you have identified --

MR. BRILL: May we have the exhibit numbers on that?

MR. SILVERMAN: 11, 22 and 25.

MR. BRILL: Oh!

Q -- and ask you whether or not those checks were cashed or deposited?

A They were cashed.

Q Would you look at the back of those checks?

(Witness examines.)

Q Do you have a breakdown on the back of those

checks?

A No.

Q Do you recall the circumstances under which you cashed those checks and did not write the breakdown on the back of the checks?

A The only instance would be if I were told to prepare the money and I was out to lunch, when the check came in and when I came back from lunch I put the check through my Simplex machine.

Q With relation to these checks do you recall that happening?

A Sometimes, yes.

Q The checks thatyou identified as being cashed, at the time they were presented to you for cashing, were they endorsed on the back of the check or were they unendorsed?

A Endorsed.

Q Did any of the payees of those checks sign those checks in your presence?

A No, sir.

Q Mrs. Muscatello, while you were looking through those checks did you have occasion to look at the names of the payees of those checks?

A No.

Q Is the name John Aurrichio --

MR. BRILL: I object to this line, if your Honor please, a repetition of what we have had. These documents are in evidence.

THE COURT: I did not hear the question. He has not finished it.

MR. BRILL: Oh, I beg pardon, and I beg your Honor's pardon. I thought he had finished.

(Record read.)

Q Is that name the name of a payee -- excuse me, is that the name of a depositor or someone who has an account at that particular branch?

A I don't know the person.

Q Excuse me?

A I don't know of that person.

Q Are you familiar with an account by that name?

A No.

Q Are you familiar with an account by the name of Arthur Lazravitch?

A No.

Q Are y ou familiar with an account by the name of Thomas Tuccella?

A No.

MR. BRILL: Excuse me. Now may I retroactively

make my objection to this line?

THE COURT: Which is?

MR. BRILL: As to her familiarity, whether or not there is an account in the name of any of these people.

THE COURT: What is the ground of the objection?

MR. BRILL: Well, the ground is that there is no showing that she is familiar with all of the accounts.

MR. SILVERMAN: Your Honor, may I be heard on that?

THE COURT: Yes.

MR.SILVERMAN: She has been a teller for 20 years. I am asking her in 20 years if she came across the name of a depositor or a client at that bank with that name.

THE COURT: I will allow it.

Q Did you ever come across the name of someone who had an account at that branch by the name of Thomas Tuccella?

A No, sir.

Q The same question as to a Michael Catenzaro?

A No.

Q The same question as to a Anthony Ferrotta?

A No.

Q Do you recall what any of the payees of these checks

looked like?

A No, sir.

Q Did you ever cash more than one check at the same time for any of these payees?

A Sometimes I could have. I am not sure.

Q What is your best recollection?

A Maybe once or twice. If it was, I would put the two amounts on the back of the check.

Q Did you notice on any of the checks that you examined or that you have identified that you cashed whether or not there was another amount listed on the back of the check besides the face amount of the check?

A Not on these, no.

MR. SILVERMAN: I have no further questions.

MR. BRILL: I have a few, your Honor, and I will proceed, in view of the hour.

CROSS EXAMINATION

BY MR. BRILL:

Q Is it Miss or Mrs.?

A Mrs.

Q Mrs. Muscatello, have you spoken to Mike Paterno more than once or twice in all of your life?

A Yes.

Q Do you remember that you appeared before a grand

jury in this case in November -- on November 16, 1972?

A I know I appeared. I don't remember the date.

Q Well, please accept my word that it is the date.

Do you remember -- on page 6 -- being asked this question with respect to the -- well, I will ask these two questions --

MR. SILVERMAN: Objection, your Honor. Is this being offered on the same ground that Mr. Brill knows it to be offered for, or is he just readingthe grand jury testimony?

MR. BRILL: No, I am not. I just asked a specific question and got a very specific answer and I am now going to demonstrate that this lady made a statement to the contrary at a prior time.

THE COURT: All right.

MR. BRILL: Thank you.

Q "Q" --

MR. BRILL: Of line 10 of page 6 of 3512, your Honor.

Q -- "How often have you met Mike Paterno?

"A I don't know how many times I met him.

"Q More than once?

"A Once or twice."

Do you recall making those answers to those

questions?

A I am sorry, I don't.

Q You don't. Do you say now that those answers are not correct?

A I don't remember how many times I met him.

Q Well, I am asking now, at the time when you were before the grand jury and you made the answer which is recorded in this transcript, do you say that you did not make that answer?

A I guess I did.

Q All right. And at that time you were under oath, were you not?

A Yes, sir.

Q Very good. Thank you.

Now included in this book of checks that you were shown, did you notice, in passing through them, for example, Exhibit 32?

A (After examining) No, I didn't.

Q You did not. You were not asked to look at that one?

A No.

Q Do you see it now?

A Yes.

Q Do you see the signature on that now?

A Yes.

Q Whose signature is it?

A I don't know.

Q Isn't that one of the authorized signatories for the account of Paterno & Sons, Inc.?

A I don't know.

MR. SILVERMAN: Objection, your Honor. How can she know who he is when she cannot read the signature.

THE COURT: She answered she doesn't know as well. Next question.

Q I show you Exhibit 31. Do you see the signature there (indicating)?

A Yes, sir.

Q And whose signature is that?

A I don't know.

Q You don't know.

I show you now Exhibit 7, which is one of the checks about which you were questioned by Mr. Silverman. Do you recognize that (indicating)?

THE COURT: 7?

MR. BRILL: 37 -- I am sorry, your Honor.

THE COURT: Okay.

Q Do you reocgnize that signature?

A Yes.

Q Can you tell us whose it is?

A Mike Paterno.

Q And will you look at 38. Do you recognize that signature?

A (After examining) No.

Q Is that Mike Paterno's signature?

A No.

Q Will you look back at Exhibit 31, please, and tell us, having looked at 37, if that is Mike Paterno?

A Yes.

THE COURT: Mrs. Muscatello, you must speak up; the jurors cannot hear you.

THE WITNESS: I am sorry.

Q Looking at Exhibit 32, having seen the other three checks, is the signature on that Michael Paterno's signature?

A No.

Q Do you have a recollection, Mrs. Muscatello, that in addition to Michael Paterno there was on that account, with which you are so familiar, anotner authorized signatory?

A No, I wasn't aware of it.

Q You were not aware of it.

Now, you told us with respect to those checks

concerning which you were asked, if you recalled any of these payees. You told us you did not; right?

A Right.

Q Do you recall the names of the payees of all the persons who present checks to you for cashing?

A No, sir.

MR. BRILL: I have no further questions.

CROSS EXAMINATION

BY MR. ROSENTHAL:

Q What are the three checks you said did not have any breakdown?

A These (indicating).

Q All of these checks were initialled okay for cashing by an officer, were they not?

A Yes, sir.

Q None of these checks were cashed on the same day, were they?

A (After examining) No.

MR. SILVERMAN: Your Honor, we are referring, so that the record is clear, only to the three checks.

MR. ROSENTHAL: That is all I am talking about, is the three checks -- they are exhibit numbers what?

MR. SILVERMAN: 11, 22 and 25.

MR. ROSENTHAL: 11, 22 and 25.

Q And you said probably somebody telephoned in and spoke to an officer and you were told to prepare a certain amount of money since you might be going out to lunch, you would leave it there, is that right?

A Right, sir.

Q And that is not unusual, is it?

A No.

Q That happens very frequently --

A Yes.

Q -- in your business or profession?

A Yes.

Q And in your bank?

A Right.

MR. ROSENTHAL: I have no further questions.

THE COURT: Anything else?

MR. SILVERMAN: Nothing further, your Honor.

THE COURT: All right, thank you, Mrs. Muscatello.

(Witness excused.)

THE COURT: It is time for our luncheon recess. Let us come back at 2:15, please.

THE CLERK: The jury is excused until 2:15.

(Luncheon recess.)

AFTERNOON SESSION

2:15 p.m.

L O U I S E F E R R A R O, called as a witness by the Government, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SILVERMAN:

Q Miss Ferraro, may I please request that you keep your voice up so the people in the back will be able to hear you.

A Yes.

Q What is your full name?

A Louise Ferraro.

Q Are you presently married?

A Yes.

Q What was your maiden name?

A Forte.

Q Is your sister Anne Altro?

A Yes.

Q Prior-- you are presently now a housewife, is that correct?

A Yes.

Q Directly prior to your becoming a housewife, were you employed?

A Yes.

Q Were you employed by Paterno & Sons,Inc.?

A Yes.

Q And during what period of time did you work for Paterno & Sons, Inc.?

A I started in January 1964 and I worked until some time in 1966, and I came back in 1966 and worked and then I worked part-time for awhile.

Q Until about what year did you work part-time?

A About 1968 I think.

Q Now, prior to seeing me in the courthouse here today, did we have an occasion to meet?

A Yes.

Q And was that a week ago Tuesday in my office?

A Yes.

Q And at that time who else was present?

A Mr. Ayres, Mr. Rizzo and my husband.

Q Your husband is Arthur Ferraro?

A Yes.

Q Now, do you know the defendant George Denti?

A Yes.

Q Do you know the defendant Michael Paterno?

A Yes.

Q And how long have you known Mr. Denti?

A Since 1964.

Q In other words, since coming to the corporation?

A Yes.

Q How long do you know Mr. Paterno?

A The same.

Q And under the same circumstances did you meet both gentlemen?

A I actually met them the end of December when I was interviewed for the job, and I started in January 1964.

Q Now, subsequent to your being hired at the firm and working for the corporation, did you and your family have any social contact with the defendant Michael Paterno?

A No.

Q Did Michael Paterno attend any functions that you gave, or did he attend your wedding?

A Yes.

Q Did you attend any functions that Mr. Paterno gave?

A Well, we went to maybe a contractors' dinner. I have been to his house.

Q Was Mr. Denti at your wedding?

A Yes.

Q And have you ever attended any functions that Mr. Denti gave, social functions?

A I have been to his house, yes.

Q On about how many occasions have you been to his house?

A Since I met them?

Q Yes.

A Oh, maybe five times.

Q And on those occasions were you with your husband?

A Yes.

Q And has Mr. Denti ever been to your house?

A Yes.

Q Now, at which location or locations did you work for Paterno & Sons, Inc., which offices?

A The one on Rowe Street.

Q Did you work for them when they were at City Island?

A I think I was just starting to -- I think I worked part time there. I am sure I did. Just part time.

Q During the period when you were on a full time basis it was at the Rowe Street office?

A Yes.

Q While you were at the Rowe Street office were there any other employees?

A When I first started in 1964 it was a one-girl office, and I was just one girl in the office.

Q Did there come a time when they hired an additional office staff?

A Yes.

Q Who was that?

A Mae Nunkin.

Q During the period that you worked for Paterno & Sons, Inc., what position did Michael Paterno have with the corporation?

A He was president of the corporation.

Q And during that same period of time while you were working for Paterno & Sons, Inc. what position did Mr. Denti have with the corporation?

A Well, I don't know-- on the corporation papers? I don't know what you mean.

Q To your knowledge, what position did he hold with the corporation?

A He just ran the office. I don't know that he had any position with the corporation.

Q Do you know who was vice president of the corporation?

A Yes.

Q Who was that?

A Tom Cohill.

Q Do you know who was secretary-treasurer of the

corporation?

A When I first started there I think Annette Paterno was treasurer.

Q During the subsequent years after you got an additional office staff, during that period of time, do you know who was secretary-treasurer?

A I never knew he was secretary-treasurer.

Q I didn't mention anyone's name.

I asked you do you know who was secretary-treasurer?

A No.

Q Now, what type of work did Michael Paterno perform while you were working for the corporation? What type of work did you see him do?

A He did just about-- you know, at the very beginning he did estimating on jobs, he went out to jobs. He was the boss.

Q Did you hear, ever hear Michael Paterno discussing business matters in the office?

A With the people, with other people? Yes.

Q And did he discuss business matters with other subcontractors?

A Yes.

Q Did he discuss business matters with people who

he was doing work for like the City of New York and other municipalities?

A Over the phone, in person, I don't know what you mean.

Q Either over the phone or in person.

A Yes, I would say so.

Q And approximately what portion of Mr. Paterno's time was spent in the office?

A In a day?

Q Yes, a given day.

A Well, it varied.

Q Okay.

Let's look at it in a given week.

A It is really very hard.

MR. BRILL: Could we have a period fixed because there are so many.

Q During the time you were working as a full time employee at the Rowe Street office, what particularly was Mr. Paterno's general schedule as far as how much time he spent in the office and how much time he did not spend in the office?

A I really don't know. Well, a lot of times like I might get inthe office and he might not be there. You know, he might be out on a job or he may have an appointment.

I can't really say that he spent half and half. I don't know. It is hard to --

Q Did Mr. Denti, did he work in the office?

A Yes.

Q What type of work did you see him do, what were his responsibilities?

A He ran the office. If I needed help with anything he would help me or he would help out with the payroll because it was a one-girl office and I really had quite a bit to do, and he would sort of pitch in and help where it was needed.

Q Do you know who ordered supplies for the office?

A What kind of supplies?

Q Let's say stationery and office supplies.

A I guess I did. I would say I did.

Q Do you know who ordered materials for the jobs?

A A variety of people would do that. It could be straight from the job or it could be from the office.

Q Did you ever hear anyone in the office ordering material?

A Yes, I have ordered material myself.

Q Did you ever hear Mr. Denti ordering material?

A Yes.

Q Did you ever hear Mr. Paterno order material?

A Yes.

Q As far as equipment rentals, rentals of all types of equipment, who did that function in the office, who would order the rental equipment?

A Well, it could-- like I might occasionally, it might be done occasionally out on the job, like if the job had a machine, they might tell it to come back next day or not to come back.

Q I am referring to when a job is first started and there was no equipment out on the sites.

Who made the initial request to order equipment?

A Before a job was started, like a lot of times if the job was just starting, the super might be in the office and order it himself.

Q Did you ever hear Mr. Denti ordering rental equipment?

A Yes.

Q Did you ever hear Mr. Paterno ordering rental equipment?

A Yes, I would say so.

Q Now, when you first started working for Paterno & Sons, Inc. what was your actual position; were you a bookkeeper?

A Yes.

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Q And what type of bookkeeping records did they have at that time?

A Before I started?

Q When you started.

A Well, they had a cash book, and you know, just cash book I guess, they worked everything out of the cash book.

Q Did they have a payroll checking account at that time?

A I don't know. I don't know. I think we might have introduced that later on. A payroll checking account?

MR. SILVERMAN: Your Honor, may we have a side bar, please?

THE COURT: Yes.

(At the side bar.)

MR. SILVERMAN: Your Honor, I hate to be a pest about this, but the witness is looking directly at Mr. Paterno and he is shaking his head in a negative answer every time she gives a negative answer.

I just don't know what to say any more to the Court. I am sitting right in back of him and I am watching his head.

MR. BRILL: I don't know how he could do that when he is busy in interrogation of the witness.

Now, your Honor may have seen it. Again, I

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didn't see it. But I want to say for the record that Mr. Paterno is a human being made of nverve and blood and if he responds, he responds instinctively.

I have given him your Honor's direction and warning, and he has promised that he will do his best to restrain himself.

I might add at this juncture, that I have heard, maybe even your Honor has heard, actually the witness has made an answer, the prosecutor says okay, yes, and then says the same kind of thing so as to give approval or at least give the impression of giving approval to the witness' answer.

I am sure he doesn't do it intentionally. I think it is an instictive response. And I think it is the same kind of thing that happens in the case of Mr.Paterno.

I don't know what else we could do about it. And I think,too, it creates a false impression.

THE COURT: Since your usually vivid imagination appears to be exhausted, I will help you. I will tell you what else we can do about it. You keep your eye on him.

MR. BRILL: I will do the best I can. I have to listen and I have to write and the pressures are inordinate, as your Honor well knows.

THE COURT: The pressures are ordinate, they are

not inordinate, and you are coping very well in your usual way.

I am telling you what to do. I have not observed this. I am not going to rule either way on it, but I will watch and you keep an eye on it.

MR. BRILL: Thank you.

MR. SILVERMAN: Thank you, your Honor.

(In open court, jury present.)

Q Mrs. Ferraro, at the time when you first began working for Paterno & Sons, Inc., did they maintain what is known as a purchase book?

A Before I started? I don't think so. No, they didn't have the purchase book.

MR. BRILL: I'm sorry, I didn't hear the last part of the answer.

A They did not have a purchase book.

Q And that is when you first began working there?

A Yes.

Q After you started working there, did they start using a purchase book?

A Yes.

Q And who in the firm initiated the use of the purchase book?

A I did.

Q And how was that purchase book used?

A Well, previously, before I started working there. they worked the purchases right through the cash disbursement and divided it up among the various jobs.

And I thought that it wasn't really good enough, so I started the purchase book with a ledger.

Q Now, what particular items were entered in the purchase book?

A Only accounts payable.

Q And from what source did you get this accounts payable?

A From the invoices that we received in the office.

Q Now, when the invoices were received in the office, was there anything affixed to them when you first r-ceived them?

A I don't understand.

Q Was anything put on the invoices when you first received them in the office?

A No.

Q Was there a stamp?

A Yes, a date stamp.

Q What type of stamp was placed on them?

A Just a date, you know, the date that it came into

the office.

Q Is it like also an empty box where other information could be recorded at a later date?

A Yes.

Q How were the invoices received at the corporation?

A Through the mail.

Q Excuse me?

A Through the mail.

Q What was done with the invoices when they were first received?

A By me? When I received them?

Q Yes.

A I would take them and put them in a folder to be entered into the purchase book.

Q At that time-- sorry --

A Once they were entered into the purchas book, I would put them in an accordion file so that they would be ready to be paid.

Q I would just like to go back a few steps: When you put them in the folder had the stamp already been put on them?

A Yes.

Q That they had been received?

A Yes.

Q Did there come a time when you entered the invoices into the purchase book?

A Yes.

Q And at the time when you entered the invoices into the purchase book did you put any information on the invoices themselves?

A Yes, the purchase page.

Q Then after you entered the invoices in the purchase book, what if anything did you do with the invoices themselves?

A Well, I would put it in the accordion file and it would be ready to be paid.

Q After you put them in the accordion file -- what order in the accordion file were these invoices filed?

A Alphabetically.

Q Was it alphabetical by the type of work or by the name of the person who was billing?

A The title of the invoice.

THE BRILL: The title of the what?

THE WITNESS: Of the invoice.

Q In other words, Arco Construction would be in the front and Zebra Construction would be in the back?

A Right.

Q Approximately how often were the invoices paid?

A Well, when I first started, you know, the company just kept growing, so we would pay -- in the very beginning we would pay like once a month.

Q And towards the end of the time you were working there, say in the year 1967 and 1968, how often were the invoices or bills paid?

A Most of them were still paid once a month, but there were occasions when they were paid more often.

Q How did that come about that the invoices were paid? Under what circumstances were they paid?

A At the end of the month I would make up an accounts payable list and show it to Mr. Paterno.

Q And on that accounts payable --

MR. BRILL: May she finish? I thought there was a rising inflection.

THE COURT: Had you finished your answer?

THE WITNESS: I was going to say I would show

Mr. Paterno the accounts payable list, and we would pay it from there.

Q This accounts payable list, did you prepare this list?

A Yes.

Q And this would be prepared from some of the invoices that were in this folder or from all of the invoices?

A From all of them.

Q You would then present this list to Mr. Paterno?

A Right.

Q What if anything would Mr. Paterno do with this list?

A He would go over it; I would usually stay there with him, and we would go down the list and we would mark next to each one who was to be paid.

Q Did he also select in which order the bills were to be paid?

A I don't know what you mean, the order.

Q When he selected the people to be paid would he tell you "Pay these this week, these the next week," and another the following week, or did he just say pay a certain number of them?

A Well, he would mark down next to each company what

to pay on it; you know, how much to pay, you know, the whole of it, or if nothing, and we would make a tape of that, and we would see how much money we had in the bank, and if we could, we would add more. If not, on some of the larger suppliers, we would pay whatever of that material we actually used on the job. Like we aren't going to pay for material we had not used yet.

Q What type of expenses were included in the list of the outstanding expenses that you gave to Mr. Paterno? What type of expenses were they?

A Well, they were accounts payable. They were all materials, suppliers, rentals, utilities; just about everything.

Q So any type of expense that was incurred by the corporation?

A Right.

Q Would the telephone bill be on that list?

A I think so, yes. Itmust have been, sure, or sometimes the telephone, I would just pay like when it came in.

Q Do you recall when afer Mr. Paterno selected the items to be paid on this list, do you recall which type of expenses would be paid before other types of expenses?

A Say that again?

Q You said that all types of expenses were included on this list?

A Yes.

Q Materials were included on this list?

A Yes.

Q And were truck rental expenses included on this list?

A Right.

Q Were any of the different types of expenses, be it the materials or truck rental expenses, paid before other types of expenses?

A Yes.

Q Which ones were paid first?

A Well, if the rental was any kind of equipment rental, if we were not paying the labor, that means that whoever rented the equipment were paying for the labor, and we would try to pay it sooner because they would incur that additional labor they had to pay out. There were occasions where we would get equipment without labor, where we would pay the operator, or whatever. Those we would sometimes wait.

Q In other words, is it accurate to state that companies that had labor expenses included --

MR. BRILL: I am going to object to this

question, if your Honor please, the paraphrase of the witness' answer, if it could be called a question.

THE COURT: Have you completed your question?

MR.SILVERMAN: No, your Honor.

THE COURT: Well, let me hear the whole question.

Q Is it accurate to state that expenses that include labor were paid before expenses that only had materials?

A Yes, I would say that.

Q Would there be any determination as to whether larger companies would be paid before smaller companies, or vice versa?

MR. BRILL: Now, that calls for an operation of the mind of another person, and I object to the question.

THE COURT: Overruled.

THE WITNESS: Would you ask that question again?

Q Would there be any determination made at that time as to whether any companies would be paid before smaller companies, or vice versa?

A I don't know.

Q Did you testify before the grand jury on three separate occasions?

A Two.

Q Two occasions?

Did you appear before the grand jury on July 20, 1972?

MR.ROSENTHAL: What page?

MR.SILVERMAN: Page 63.

Q I ask you to read that page to yourself, please.

A Now ask your question again.

Q Did you have an opportunity to read that page?

A Yes.

Q My question is, was there any determination made as to whether or not larger companies were paid before smaller companies, or vice versa?

A Well, I didn't realize that you meant like rental, of course, you know, there are small supply companies too.

Q Well, we are referring now to truckers.

A Okay.

Q What is your answer?

A Let me think.

You see, like on some of the rental bills, if it were paid like, you know, we would occasionally pay them before the month was over, so they might not even be on that list by the time Mr. Paterno got it. Like, you know, we would sometimes pay them -- a lot of times it would be whoever called, we would just pay them if they wanted and needed the money.

Q My question is, after reading that page is your recollection refreshed as to whether or not larger companies were paid before smaller companies, or whether smaller companies were paid --

A The smaller bills on rentals.

Q They were paid first?

A Yes.

Q Now, what was the time period between the receipt of the invoice and the payment of the expense to truck rental outfits?

A Well, it varied. If there were labor involved, you know, if we were paying for the truck with the truck driver, we would try to pay it as soon as possible; I guess within weeks.

Q What is the longest period of time that you could recollect as to the time period between receipt of the invoice and the payment of a check to a trucker?

A The longest?

MR. BRILL: Your Honor, I object to this. I object to the entire line. I don't think it is probative of anything.

THE COURT: Overruled.

MR. BRILL: I respectfully except.

THE WITNESS: Will you repeat that?

Q What was the longest time period you could recall between the receipt of an invoice of an equipment rental, a truck rental, and the payment of that invoice by a check of the corporation?

MR. BRILL: I object to that question. It is a compound question. It talks about two different kinds of rentals.

THE COURT: Let me hear it.

(Answer read.)

THE COURT: Do you mean truck rental?

MR. SILVERMAN: Yes, your Honor.

THE COURT: That is what he is referring to in that question.

You may answer.

A The longest period of time? I really wouldn't know.

Q You have no recollection as to that?

A There were hundreds of bills in that office. I couldn't possibly tell you how long a bill was in the office before it was paid.

Q Getting back to the invoices themselves, before the invoices were filed in the accordion file that you have described, in alphabetical order, was there anything attached to these invoices before they were filed?

A Well, if I had receipts for these invoices they would be attached.

Q Now referring specifically to truck rental expenses, where would you go, if any place, in order to get these receipts?

A I would usually get them off the cost sheets.

Q And where would the cost sheets be found?

A We had a cost folder for each job.

Q And that was separate from this accordion file?

A That is right.

Q Before you file the invoices into this accordion file, would you take the receipts from this cost sheet and attach them to the appropriate invoice?

A Yes.

Q Do you recall any occasion when you received an invoice or a trucking rental expense where there were no receipts on the cost sheet applied to that particular invoice?

A Well, I don't recall a specific occasion, but it did happen.

Q On those occasions, what if anything did you do?

A Well, I would usually refer right to the cost sheet because all the equipment on the job had to be lifted on the cost sheet.

Q Did you ever come across an occasion where there were either no receipts or no indication on the cost sheet as to whether or not that invoice could be substantiated?

A You are talking about strictly truck rentals?

Q Yes, ma'am.

A Where there was no indication on the cost sheet?

Q There were no receipts or -- excuse me -- and there was nothing on the cost sheet to indicate that that invoice applied to that particular cost sheet?

A I don't think so.

Q On each and every occasion --

A I can't say no, because I really couldn't say no, but it would be highly unlikely.

Q I am asking you for your best recollection.

A Okay.

Q Now did you maintain an index or a directory of contractors that worked for Paterno & Sons, Inc.?

A You mean subcontractors?

Q Yes.

A Yes.

Q And in that index or directory were the names of truckers included?

A Are y ou talking about a phone list?

Q Yes.

A Yes.

Q And what did this directory look like?

A Well, I had a Rolidex.

Q Was this the same Rolidex that Mae Nunkin had or was it your own Rolidex?

A I am not really sure whether she had her own or whether she started with it -- she did all the phone calling and I gave her mine -- I am not really sure.

Q Do you recall whether or not during the period that you worked for Paterno & Sons, Inc. this Rolidex was on your desk or on her desk?

A Well, when I started in 1964 Mae was not in the office, so it was on my desk.

Q I am referring to the period when Mae Nunkin was working there.

A I don't know. I really don't remember.

Q Are you familiar with the name of Sal Minichino?

A Yes.

Q What business is Mr. Minichino in?

A He is in the truck rental business.

Q Are you familiar with the name Sam La Spina?

A Yes.

Q What business is he in?

A Truck rental.

Q Are you familiar with the name Roy Cimino?

A No, that does not sound familiar to me.

MR. BRILL: I cannot hear the answer.

(Answer read.)

Q Will you please speak up?

A I am sorry.

Q Are you familiar with the name Cross County Trucking?

A No.

Q Are you familiar with the name Lobosco.

A No.

Q Are you familiar with the name Gun Hill Trucking?

A Yes.

Q Are they all firms, to your knowledge, that worked for Paterno & Sons?

A The ones that I remembered, yes.

Q And were those names on the Rolidex that you are referring to?

A I don't really know.

Q What is your best recollection?

A Some of them might have been.

Q Do you recall calling any of these firms on any occasion?

A Yes.

Q And when you did call these firms, from what source would you get their telephone number, if you recall?

A Usually on my Rolidex.

Q Now the name John Aurrichio, are you familiar with that name?

A I am now.

Q Was that name on the Rolidex?

A I don't know.

Q What is your best recollection?

A I really don't know.

MR. BRILL: I am going to object to this line, your Honor, consistent with my objections to the questions addressed to other witnesses, with respect to these names.

THE COURT: All right, the same ruling.

(Record read by the reporter.)

Q Do you recall the name of Michael Catenzaro?

A Yes.

Q Was that name on the Rolidex?

A I don't know.

Q Do you recall the name of Arthur Lazravitch?

A Yes.

Q Was that name on the Rolidex?

A I just want to say one thing, the only reason why these names are familiar to me is because of what's happened in the last two years -- I mean because these names have been popping up so much. I mean, I don't know if I remember them from ten years ago.

Q So your familiarity with these names is because of the questions that you are asked about them?

A Yes, that is right.

Q Does the name Thomas Tuccella -- is your recollection the same as to that one?

A Yes.

Q Now after the invoices were paid -- withdrawn, excuse me.

Did you prepare the checks for payment of invoices?

A Yes, I did.

Q And after you prepared the checks did you give them to anyone for signing?

A Mr. Paterno.

Q After the checks were signed what if anything would you do with the invoices with the receipts that had been attached to that?

A I would file them in the paid file.

Q And was the paid file in alphabetical order or chronological order?

A Alphabetical order.

Q Was it alphabetical by job or by name of the person who was billing the corporation?

A The name of the invoice.

Q And where were these files kept? Did they remain in the office on Rowe Street?

A Yes.

Q Did there ever come a time when you would remove the invoices from the file cabinets that you just described?

A You mean the paid invoices you are referring to?

Q Yes.

A I really don't remember because I was only on Rowe Street --

Q I am only referring to while you were on Rowe Street.

A Then we moved up front. We were in the back when I first started. It was a very small office. I don't remember exactly how long we were back there. Then when we moved up front we sort of changed the filing around. They might have been removed at that time -- like some of the older bills, I don't remember.

Q Do you ever recall seeing anyone throwing out these

paid invoices?

A Throwing them away?

Q Yes.

A No, I never saw anyone.

Q Did you ever see anyone removing the receipts that were stapled to the invoices, tearing them off?

A Well, you know, there were certain suppliers like -- I can give you an example -- like Colonial Concrete, I remember that, because they had very bulky receipts. I mean if they delivered one yard of concrete there was one receipt for it. You could have 100 receipts on the bill, and there were occasions we would take out the receipts so that it would be easier to file.

Q With reference to the five truckers that you have just mentioned --

A Yes.

Q -- do you ever recall removing the receipts attached to any of those invoices?

A I can't say exactly.

Q Do you recall doing that?

A I recall that I might have straightened out the files and taken out receipts but I cannot say specifically which bills they were for.

Q Do you remember specifically Colonial Concrete

doing that?

A Yes, because it was a very bulky thing.

Q How often a basis were these receipts removed from the invoices?

A There was no set pattern, like if I would go to the file and I would see that the bills were really old, and there was no reason to keep them any longer, I would just take them off -- I mean the bills were paid, they were okayed, they were on cost sheets.

Q You say they were old. During the year, let us say, 1969 when you worked there, for what years would you do this tearing of receipts off the invoices?

MR. BRILL: I object to this as being speculation.

THE COURT: Yes. I do not think there has been an adequate foundation for that.

I will sustain it.

Q During the year 1969 and 1970 when you were working on a parttime basis -- is that correct?

A I am not sure -- was I? I really am not sure.

Q You testified -- and you correct me if I am wrong -- that you worked from approximately January in 1964 to, I have, the spring of 1966.

A Yes, that is right.

Q And then I think I have you working from some time in the latter part of 1966 through 1968; is that correct or incorrect?

A No -- wait a minute. I know I went back in September of 1966 -- I took the summer off -- '66 -- let me see, I am trying to think.

You know, I really cannot -- wait a minute -- I think it was probably till 1968 -- in July 1968. I think -- you know, I just can't get -- some time in '68 it must have been.

Q During the year 1968, during that year when you were working on a parttime basis, on a how often basis was it -- was it once a week or more than that?

A Once a week, once or twice a week at the very most.

Q During that period of time do you recall during that year tearing any of the receipts from the invoices?

A No. When I went in on a parttime basis I just did payroll.

Q So the times that you stated that you had taken the receipts from the invoices would have been during the period of 1964 to 1966?

A Yes.

Q Do you recall ever receiving telephone calls

from truckers requesting payments?

A Yes.

Q In those situations what if anything would you do?

A I would -- if Mike were there -- if Mr. Paterno were there I would usually tell him, or if George was there I would usually tell him that so and so called and would like to get paid, and if we had the money and they okayed the bills I would usually pay it.

Q Do you recall receiving a telephone call from a John Aurrichio?

MR. BRILL: The same objection to this entire line.

THE COURT: What is your objection to this entire line?

MR. BRILL: That ones that I have made since the first time these names have been mentioned with respect to specifically whether or not the witness actually did or did not, based on recollecton -- and it is all recollection now; there is no specific instance pointing to a particular episode; it is a general recollection, and I think it is so broad, so vague as to be without probative value.

THE COURT: It is overruled.

(Question read.)

Q (Continuing) -- requesting payment of his trucking expenses?

A No. When it was a one-girl office, when I was there alone, there must have been hundreds of calls. I couldn't possibly say I remember getting a call from him.

Q What is your best recollection?

A I don't know.

Q The same with the other four truckers that I mentioned. Do you recall receiving telephone calls from them requesting payment?

A No, I don't.

Q Do you recall receiving any telephone calls from Mr. Minichino or his wife?

A No.

Q Do you recall receiving telephone calls from Mr. La Spina requesting payment?

A I think -- yes, he might have called.

Q Do you recall the names of any other truckers that had called during the period when you worked there, requesting payment of expenses that were outstanding?

A No, I don't recall any.

MR. BRILL: I am sorry, I did not hear it.

(Answer read.)

Q I would like to show you these checks (handing).

Have you seen these checks before?

A Yes, I have.

Q Is it true that you saw them in my office?

A And before that.

Q But you saw them in my office, is that correct?

A Yes.

Q And were these numbers in the upper right-hand corner that says Government's Exhibit No. -- were they on them at the time you saw them?

A Yes, they were.

Q Will you please thumb through the checks in order to save time, and just call out the numbers of the checks that you personally prepared?

A Okay.

Q That is, where you recognize your own handwriting.

A All right.

(After examining) No. 1, No. 3, No. 7, 8, 9, 11, 12, 13, 14, 15, 16, 17; 20; 22; 30, 31, 32, 33, 34, 35; 41, 42, 43 -- that's all.

Q After these checks were prepared in preference to the ones with invoices, after they were prepared and signed, what if anything would happen to them?

A Well, the invoices would be marked paid and envelopes would be made out and they would be mailed out.

Q Were there ever occasions when the checks would not be mailed out?

A Yes,on occasion supplies and rentals -- you know, if the people had been calling for money they would sometimes ask us to keep it there and they would pick it up.

Q Do you recall receiving telephone calls from any of the five payees that we are talking about, requesting that their checks be held in the office so that they could come in and pick them up?

MR. BRILL: The same objection.

THE COURT: The same ruling.

MR. BRILL: Thank you.

A I couldn't possibly remember.

Q Do you recall that happening?

A Well, people did call --

MR. BRILL: The same objection.

THE COURT: I think she has answered it.

Q Mrs. Ferraro, did you ever have a conversation with defendant Michael Paterno concerning the existence or non-existence of these truckers?

A Would you repeat the question?

(Question read.)

A I don't --

Q I am referring to the five trucking names --

A Right.

Q -- that we have been discussing. Did you ever have a conversation with him about it?

A You mean recently?

I don't know what you mean.

Q At any time.

A Well, when all of this started, of course I called up Mr. Paterno or George Denti, trying to find out what it was all about -- I mean when I got a subpoena -- or, no, it was even before that. I am not really sure exactly when I spoke to them. I asked them what it was all about and they said, you know, they explained it --

Q What did Mr. Paterno say to you in reference to whether or not these truckers existed or did not exist?

A They said -- he said or George --

Q Let us talk about Mr. Paterno. What did he say to you in response to your question with reference to whether or not these truckers existed or didn't exist?

A I asked him what it was all about and he said that they claimed that these truckers do not exist.

Q No. What did he say as to whether or not these truckers existed or didn't exist?

A He said they did.

Q Did you have a similar conversation with Mr. Denti?

A I don't know the exact wording but it was something to that effect.

Q Mrs. Ferraro, did you testify before the grand jury on March 9th, 1973?

A Yes.

Q I'd like to refer you to page 82 and ask you to read thatpage to yourself.

(Pause.)

Q Did you have an opportunity to read that page?

A Yes.

Q I'd like to ask you the question again.

Did you have an occasion to have a conversation with Mr. Denti as to whetheror not these truckers existed or did not exist?

A Yes.

Q And what did Mr. Denti say to you as to whether or not these truckers existed or didn't exist?

A He said that they did exist.

Q They --

A They did.

MR. SILVERMAN: I have no further questions.

THE COURT: Did you want a recess, Mr. Brill?

I saw you admiring the clock.

MR. BRILL: I always admire the clock, Judge.

THE COURT: Do you want a recess or do you want to proceed?

MR. BRILL: I think it would be convenient. This lady has been on for about--

THE COURT: Let's take ten minutes.

(Recess.)

MR. SILVERMAN: The witness just asked me, your Honor, as to whether or not she would be able to stay in the room after she finishes her testimony, and I don't know the Court's position on that.

THE WITNESS: The only reason I asked is because I have to wait until five o'clock to get a bus.

THE COURT: Does anybody object?

MR. SILVERMAN: I have no objection.

MR. BRILL: I have no objection.

MR. ROSENTHAL: No objection.

THE COURT: The answer is yes, you may.

CROSS-EXAMINATION

BY MR. BRILL:

Q Mrs. Ferraro, I invite your attention to Exhibit 32 which is one of the checks that you said you prepared in your own handwriting.

Do you know whose signature appears on the face of that check?

A Thomas Cohill.

Q And who is Thomas Cohill?

A He is the vice president of the corporation.

Q All right.

Now, did you present that check to Mr. Cohill for signature, if you remember?

A I must have.

Q You must have.

At the time when you presented it to him for signature, did you present anything else to him?

A Well, the invoice must have been with it.

Q And did you present what has been called here as back-up or substantiation material?

A Yes.

Q Did you do that in every case when you presented a check to Mike Paterno for signature?

A Yes.

Q Incidentally, do you know whose handwriting, apart from the signature, appears on Exhibit 38?

A I think that's my sister's handwriting.

Q And do you recognize the signature on the face of that check?

A That's also Tom Cohill's.

Q That's also Mr. Cohill's.

Now, did you break your sister into the job as a bookkeeper?

A Yes.

Q And among the instructions and advice and the training that you gave her, did you explain to her that she had to present back-up or substantiation material to Mr. Paterno or Mr. Cohill when she presented a check for signature?

A Yes.

Q Did she ever tell you that she didn't do that?

A No.

Q Yousaid today- I am not trying to quote you - I better ask a question.

Until approximately two years ago when you were first questioned about the matters concerning which the prosecutor asked you questions this afternoon, did you have an independent recollection of any of the names that he mentioned to you?

Do you understand my question?

A No, I'm sorry.

Q Was it approximately two years ago that you were questioned about this case?

A Probably a little more.

Q First by Mr. Ayres of the Internal Revenue Service?

A He and Mr. Rizzo came up to my house.

Q And later you made several appearances before the grand jury?

A Yes.

Q And you were accompanied by your husband Arthur Ferraro?

A Right, yes.

Q Before Mr. Ayres or Mr. Rizzo questioned you about this case, did you have a recollection of the names of any particular truckers who have done work for Paterno & Sons, Inc.?

A Well, I remembered some of them, but it was really a very vague thing because when I started with them there must have been thousands of those, it was just a very busy office, I mean I just couldn't remember one specifically.

When they showed me a bill with my writing on it, I mean, you know, I just realized, I must have seen it or heard of it, because I wrote on it.

Q You are referring now to the practice of putting a stamp showing the receipt of an invoice?

A Yes. And paying it, and entering it in the purchase book.

Q Entry on the stamp showing where it was entered in the purchase journal?

A Yes.

Q And the check that was issued in payment for it?

A Right.

Q And that's what fixed those names in your mind, isn't that so?

A I would say so.

Q Were you shown other invoices of other truckers at the same time?

A No.

Q Were you shown checks made payable to other truckers at the same time?

A No.

Q Were you shown any other matters with respect to any other truckers at the time that you were shown material with respect to these five?

A No.

Q Whose names have been mentioned by the prosecutor in his examination of you today?

A No.

Q You were asked whether since you testified before the grand jury you had had a conversation with Mike Paterno about the existence or non-existence of these five truckers.

In substance, were you talking with him about only the matters that had been presented to you by the agents or by the prosecutor before the grand jury?

A Yes.

Q Were any other names mentioned about truckers as to whether or not they existed?

A No.

Q And when you put the question to him, did you specifically mention any names?

A Well, when I got the subpoena, or when I, you know, heard what was going on-- I guess when I got the subpoena to the grand jury, I called to find out what it was about, I mean, I had no idea what it was all about.

Q Did you mention any specific names in connection with what truckers existed or did not exist?

A No.

Q And did Mike Paterno mention any specific names with respect to the existence or non-existence of any specific truckers?

A No.

Q The answer to that last question is?

A No.

Q Are you able to say, Mrs. Ferraro, whether you removed or did not remove specific receipts from any specific invoice?

A Like I said before, I could remember the Colonial because Colonial --

Q Apart from that.

A Not specifically, no.

Q Was there anything special about the removal of receipts after a bill had been paid?

A Well, the only reason why we would is because it would be less bulky to file, you know, if they were old bills, just to keep them more in order.

Q And you kept only the invoice and the cancelled check when it came back?

A Right.

Q That was proof of the payment of the bill?

A That is right.

Q Do you have an independent recollection now as to whether all of the names which were mentioned to you by Mr. Silverman in his direct examination were truckers? For example, you remember that Lobosco was a trucker?

A Well, I don't think he was specifically a trucker. I think it was all rentals.

Q It was equipment rental other than truckers?

A Right.

Q And specifically other than excavation trucks, isn't that so?

A I don't really know. I know it was a rental company.

Q Equipment rental?

A Right.

Q But you can't say it was truck rental?

A No, I can't say specifically.

Q Now, there are some questions put to you about the method of selection of the bills that were to be paid when Paterno & Sons, Inc. had money in the bank to pay bills. Specifically, was there, first, the need to have the money in the bank?

A Yes.

Q And were there times when money was tight?

A Yes.

Q And were there times when, to your knowledge, Mike Paterno went to the municipality or agency for which Paterno & Sons were doing work, banging at their doors for payment?

A Yes.

Q And were there times, eventually, after a lapse of time when payment came in?

A Yes.

Q And as soon as payment came in were the bills paid?

A Usually, yes.

Q And in the interim during the lean periods were bills of suppliers paid first in order to ensure the continuing flow of supplies needed for the jobs?

THE WITNESS: Would you repeat that again, please?

Q Yes. In the periods, in the lean periods between the times when you were paid by the municipalities or agencies that owed you money for work done, were the suppliers paid first in order to ensure the flow of materials to the jobs?

A Yes, I would say occasionally.

Q And was it true at the time that those who could be put off would be put off until there was enough money in the bank to pay them all?

A Yes.

Q Now in respect of the payment of bills and preparation of checks, do you know of any time when Mike Paterno signed a check for materials or services or the rental of either excavation trucks or equipment without having substantiation to show that that payment was due and owing?

A He would never sign it.

Q In conversation with Mike Paterno, at any time since the commencement, to your knowledge, of this investigation which resulted in this case, did Mike Paterno ever suggest to you that you do anything except tell the truth?

A No.

Q Didn't he, as a matter of fact, say to you to tell the truth?

A Yes, he did.

Q Were you shown the invoices which were the subject of the payment of these checks --

A Yes, I was.

Q -- by Mr. Ayres, Mr. Rizzo, Mr. Silverman and his predecessors?

A Yes.

Q And are they the same invoices which are numbered, without going through them consecutively, beginning with 1-A, during the period that you were employed there - were they the same invoices which are in this book?

A Yes.

Q Would you just glance at them, please.

A Yes.

Q And were youasked whether you had typed any of these invoices?

A Yes, I was.

Q Did you, as a matter of fact, type any of those invoices?

A I absolutely did not.

Q Did you, as a matter of fact, have anything to do with the preparation of these invoices?

A Absolutely not.

Q Did you do anything other than, during the time when you were the bookkeeper, put the stamp on showing the date of receipt and subsequently enter the date of entry in the purchase journal?

A That is all I did.

Q Apart from the preparation of the checks?

A Right.

MR. BRILL: Will your Honor indulge me a moment?

THE COURT: Yes.

Q Since you have been here waiting to be called have you seen Mr. Cohill here?

A Yes, I have.

Q Did you see him here today?

A Today is the only time I did see him.

Q Did you keep some sort of a record at the office of the requests from the job site, whether it be the super or assistant super or the foreman or anyone else at the job site, of the requests for either materials or equipment or excavation trucks?

A Did I keep a record of them?

Q Yes.

A No.

Q And to your knowledge did you ascertain, in the course of your duties, that the dump trucks, excavation trucks actually wereobtained on the job site by someone at the job site?

A I would say that most of the times that was the case.

MR. BRILL: I have no further questions, your Honor.

CROSS-EXAMINATION

BY MR. ROSENTHAL:

MR. ROSENTHAL: Your Honor, I think this would be a good moment to mark into evidence Defendant's Exhibits X-6 through X-11, which were the invoices and checks that your Honor had said earlier I think on Friday that I might offer the following morning.

I have shown them to-- I guess it was Tuesday -- to offer them Wednesday morning.

I have shown them to Mr. Silverman before and he has stated that there was no objection and your Honor told me I might mark them into evidence at any time thereafter, correct?

MR. SILVERMAN: No objection, your Honor.

(Defendant's Exhibits X-6, 7, 8, 9, 10 and X-11 received in evidence.)

Q Mrs. Ferraro, you worked there part time in 1968?

A Yes.

Q And where was the firm then, were they still on Rowe Avenue or Street or had they moved to City Island?

A I am not sure. I think they might have moved by now.

Q At any rate, I show you Defendant's Exhibit X-6,

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which is an invoice from B.Napa Trucking Company.

Now, that invoice is dated May, is it not?

A Yes.

Q May 1st?

A May 6th.

Q May 6th. And your stamp indicates -- when I say your stamp, I mean Paterno & Sons' stamp means it was received on July 6th?

A Right.

Q Approximately two months later?

A Right.

Q And when was the invoice paid?

A August 20th.

Q Now, do you have any idea of how many days that was after the receipt of the invoice?

A Well, it is about a month and two weeks.

Q Will you take my calculation that it is 45 days?

A Yes.

Q Which is about six and a half weeks.

What is the total amount of that invoice?

A $184.

Q And what is it for?

A It is for two days of truck rental.

Q Plus the driver?

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A Yes, that's included.

Q And would you judge from that invoice that Mr. Napa was a wealthy man, a big trucker who could afford to wait?

A I would say not.

MR. SILVERMAN: Objection, your Honor.

THE COURT: Sustained.

MR. SILVERMAN: One other thing, if your Honor please, at this time, I believe the Court has ruled that as far as these documents are concerned, they speak for themselves.

THE COURT: Yes, I don't think we need to bother the witness to computing the space of time.

MR. ROSENTHAL: Your Honor, the witness made a statement on direct examination that it was her practice and the practice of Paterno & Sons, since she was representing them at the time, to attempt to pay the small people, particularly where there was labor involved, within a week or two weeks after the receipt of the invoice, and I have here a series of invoices that run anywheres from 45 days to I think as much as 75 days where labor was involved and where the invoices were not paid.

THE COURT: You have just made the point. You have told us what you have in evidence, and you have even

made your argument about it, and I repeat, you don't need to bother the witness with it.

MR. ROSENTHAL: Then I won't bother the witness, your Honor.

MR. SILVERMAN: What are the numbers of those exhibits, please?

MR. ROSENTHAL: X-6 through X-11.

MR. SILVERMAN: Thank you.

MR. ROSENTHAL: If you want to take them and make notes as to what they are I will be happy to lend them to you.

MR. SILVERMAN: No, thank you.

Q Now, Mrs. Ferraro, Mr. Silverman showed you or called your attention or directed your attention to page 82 of the grand jury minutes of March 9, 1973.

Do you recall that?

A Yes.

Q And asked you if it refreshed your recollection as to whether or not you had spoken with George Denti concerning the five truckers that are in question.

A Yes.

Q Now, at the time you were asked that question before the grand jury, were you also asked what George Denti had told you?

A I'm sorry, I don't undersatnd what you are talking about.

MR. ROSENTHAL: I will withdraw it.

Q I call your attention to line 17 of the grand jury minutes.

MR. BRILL: Page, please?

MR. ROSENTHAL: Page 82.

Q Just read it to yourself.

(Pause.)

Q Now, Mrs. Ferraro, that line 17 and the line that followed thereafter, is that portion of the grand jury minutes that concern your questioning about discussion with George Denti concerning the investigation, is that correct?

A Yes.

MR. SILVERMAN: Objection, your Honor.

As I look at those lines, your Honor, there is nothing in those lines that is contradictory to whatever the witness has previously testified. So I don't understand the purpose of having her read them.

MR. ROSENTHAL: I said they amplified what the witness testified.

THE COURT: No, I don't want you to read grand jury minutes.

MR. ROSENTHAL: I am not reading them, Judge.

THE COURT: Well, a fortiori, I don't want you to paraphrase them to amplify what the witness has testified about.

The objection is sustained and insofar as there is an answer, it is stricken and the jury will disregard it.

Q Mrs. Ferraro, do you recall at the time you were questioned by a Mr. Friedman, an Assistant United States Attorney,before the grand jury, what your complete answer was concerning your conversations with George Denti in respect to the investigation that you were being questioned about?

A Well, this was the end result of my conversation with him. I just asked him, you know, when I spoke to Geroge-- I am not sure whether it was George or Mike, whatever it says in there I guess it must be-- I asked him what it was all about, what this whole thing was all about, and he said,"They are questioning thes truckers and they claim that they don't exist and they do."

And that was it.

Q And did he tell you anything as to what you should do?

A Nothing at all.

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Q In respect to your testimony?

A No, just to tell the truth of whatever I knew.

MR. ROSENTHAL: Yes, it is important to always tell the truth.

MR. SILVERMAN: Your Honor, I move to strike Mr. Rosentha's remarks.

THE COURT: I won't strike it but I will ask you to stop doing it.

MR. ROSENTHAL: I'm sorry, Judge.

Q Did you tell the truth?

A Yes.

Q And have you told the truth here today?

A Yes.

MR. ROSENTHAL: I have no -- one more question Judge.

Q Now, I think on direct examination today, Mr. Silverman mentioned a trucker by the name of LaSpina.

A Yes.

Q I think Sam or Samuel LaSpina?

A Yes.

Q And you said that you knew the name and so forth.

Now, I show you Government's Exhibit 173, which is a summary prepared by Mr. Rizzo of the Internal Revenue Service, and ask you to note the name LaSpina and the years

1966 and the fiscal year ending February 28th, 1967. And that was the period of time when you were employed at full time, wasn't it?

A Right.

MR. SILVERMAN: What year are we referring to now? Fiscal year ending--

MR. ROSENTHAL: 1966 and the fiscal year ending February 28, 1967.

Q And what time in 1967 did you leave, do you remember? When I say leave, I mean--

A I came back in September--

Q When was the first? I think you left because of the fact that you were anticipating giving birth, isn't that correct?

A Yes, in 1966.

Q In 1968? When was your first child born?

A May 1966.

Q May 1966?

A Right.

Q And you left shortly before then?

A In the month before.

Q The month before?

A Right.

Q So that you weren't there during 1966, were you?

A No, I came back in September.

Q 1966?

A 1966.

Q And that was on a part time basis?

A No, that was full time.

Q And then when did you leave again?

A Let me see, you know, I just can't remember the years. I think I was-- that was 1968.

Q Do you remember about when in 1968 it was?

A I don't remember at all.

Q Well, is it fair to say that Mr. LaSpina did not supply any trucking to Paterno & Sons for the fiscal year ending February 28, 1966 and February 28, 1967?

A Yes.

MR. SILVERMAN: Objection, your Honor.

THE COURT: Do you know?

A Well, it says so on the--

THE COURT: No, no, do you know? Whatever it says on there we can read.

Do you know?

A No, I don't personally know.

Q And do you remember or as you sit there, do you remember when you first started hearing of Mr. LaSpina as a supplier of trucks or trucking?

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A When I first heard it?

Q Yes.

A I don't remember.

Q About what year was it?

A I don't know.

MR. ROSENTHAL: I have no other questions.

REDIRECT EXAMINATION

BY MR. SILVERMAN:

Q Mrs. Ferraro, in relation to one question that Mr. Brill asked as to your conversation with Mr. Paterno, my question to you is this: When you had this conversation with Mr. Paterno in relation to the existence or the non-existence of these truckers, did you at any time mention the names of these truckers that you had been previously questioned about?

A You mean to him at that time?

Q Yes.

A I don't think so.

Q Did you in any way identify them as a group?

A No, I think we just referred to it as the five truckers or --

Q When you had this conversationwith Mr. Paterno, did you say to him in the conversation that you had with Mr.Paterno, did you ask him whetheror not these five truckers

had existed?

A Did I ask him?

Q Yes.

A No, I don't think so.

Q I'd like to refer you to page 83 of March 9th, 1973 testimony, and ask you to read that page and ask you if that refreshes your recollection.

A Yes.

Q Does that refresh your recollection as to whether or not you mentioned five truckers?

A Yes.

Q And in your conversation with Mr. Paterno, did you ask him or tell him that you were questioned by some agents about the existence or non-existence of five truckers?

A Yes.

Q And did you say that to him?

A Yes.

Q And did he tell you that these five truckers existed?

A Something to that effect.

MR. BRILL: Wasn't that on direct examination?

THE COURT: I will allow it.

A It was something to that effect.

Q What do you mean?

A Well, more or less that.

Q But when you had this conversation, you did mention in that conversation the fact that it was questions in response to only five of the truckers that you were being questioned about?

A Those were the only truckers I was questioned about. There were only five I was ever asked about.

MR. SILVERMAN: Okay, I have no other questions.

RECROSS-EXAMINATION

BY MR. BRILL:

Q Could we take a moment at the side bar before this lady is excused, your Honor?

THE COURT: Yes.

pm

(At the side bar.)

MR. BRILL: I now have separated, and I believe they have been seen by Mr. Silverman's representatives, Mr. Ayres and Mr. Rizzo, the cash disbursements books for the period involved in the indictment concerning which Mr. Rizzo testified, on the basis of which eventually Exhibits 172 and 173 came into evidence.

I would like to have those, so that the record is complete, marked as Defendants' Exhibits, and Mr. Silverman has agreed that there is no objection to that.

MR. SILVERMAN: Don't say --

THE COURT: Well, why keep this lady waiting?

MR. BRILL: Because if there is any question I will have her identify them.

MR. SILVERMAN: She cannot identify all the years; she can only identify --

MR. BRILL: Well, she can identify what she can identify, we will see.

THE COURT: Isn't this the subject on which I already told you that if this relates to your own case you can call these people as your own witnesses?

MR. BRILL: It relates to Exhibits 172 and 173 --

THE COURT: I realize that.

MR. BRILL: -- and it will be part of the motion that I propose to make when the time comes at the end of the government's case. It doesn't seem, assuming that your Honor says --

THE COURT: Well, it probably is not the kind of an election to which you need to be laying very elaborate plans at this point, but go ahead.

MR. BRILL: Thank you. It will only take a minute. Maybe we won't have to keep her.

Do we have a disagreement?

MR. SILVERMAN: I do not understand what the offer is about.

MR. BRILL: The offer is with respect to the cash disbursement book for the fiscal years involved in this indictment, and that is all.

MR. SILVERMAN: Your Honor, I have also been given a cash disbursement book --

MR. BRILL: May we just deal with this thing first and then with the other?

MR. SILVERMAN: Well, you had your say. I have been given the cash disbursement book for the years 1970 to the present time. If Mr. Brill wants to offer those, I will offer those at the same time and stipulate to their authenticity and into evidence.

I cannot see why they cannot be done all at once.

THE COURT: Is there going to be any problem with authenticity?

MR. SILVERMAN: As the ones that I received from him.

THE COURT: Is that agreeable?

MR. BRILL: I do not think there is -- yes, there is no question about authenticity but I do object with respect to those books which come in the period in the last date involved in the indictment. I do not think they are relevant or material.

THE COURT: We have talked about the purpose of them. I take it it is to show the cessation of these payments.

MR. SILVERMAN: Yes, your Honor.

MR. BRILL: He is talking about the introduction of books to 1974.

THE COURT: I know, but the limited purpose has already been discussed, and it may be erroneous but for that limited purpose I will allow him to do it. In any event, that does not create any problem why this lady should be kept waiting.

MR. BRILL: That is true.

THE COURT: Then let us excuse her.

MR. BRILL: Fine.

(In open court.)

THE COURT: You are excused.

(Witness excused.)

MR. SILVERMAN: Your Honor, at this time the government would like to offer for identification Exhibits 162, 163 and 164 -- 162 being the testimony of George Denti before the Internal Revenue Service on July 28, 1971, Part I; 163 being the testimony on the same date, Part II; and 164 being the testimony of George Denti before the Internal Revenue Service on August 5th, 1971.

At this time the government would like to offer in evidence Exhibit 162-C, which are excerpts of questions and answers taken from 162 and 163.

It is the understanding of the government at this time, your Honor, that the questions and answers that are being offered in evidence relate only to Mr. Denti and do not relate to Mr. Paterno; and also that if at any time during the future of this trial, if Mr. Rosenthal or Mr. Brill care to enter into evidence any other statements that are contained in 162, 3 or 4 for identification, the government would have no objection.

THE COURT: Does that fairly reflect your understanding, gentlemen?

MR. ROSENTHAL: It does, your Honor. I thought I understood what Mr. Silverman said until Mr. Brill spoke into my ear. Perhaps I did not; I still think I did.

What you are offering in evidence is the excerpted matter, is that correct? The others are being merely for identification?

MR. SILVERMAN: Yes.

MR. ROSENTHAL: That is my understanding.

THE COURT: All right, with that understanding then -- what is the number?

MR. SILVERMAN: 162-C.

THE COURT: -- will be received.

(Government's Exhibit 162-C was received in evidence.)

MR. SILVERMAN: Your Honor, at this time I would like to read to the jury.

THE COURT: Okay; go ahead.

MR. SILVERMAN: "Q Who makes arrangement for rental of equipment ?

"A The supers on the job handle their own renting problems.

"Q How many supers do you have?

"A Now, we have one, two, three and we have had as many as six, depending on how many jobs we have going.

"Q Have you records in Paterno & Company showing who the super is on the particular job?

"A Oh, most any job you would mention I could tell you who the super was; last eight months, two years.

"Q Juniper Boulevard job?

"A James O'Reilly.

"Q Sloan Street, Queens?

"A That was Tom Cohill.

"Q Carmel Sewerage Treatment?

"A Jimmy O'Reilly.

"Q Rockaway Queens?

"A What year?

"Q 1966.

"A That was a combination of all three, Cohill, O'Reilly and Michael Paterno.

"Q Water Main?

"A O'Reilly.

"Q Who would that be with, Water Main?

"A The Water Supply Gas and Electric for the City of New York. We put in a 12-inch steel pipe on Watson Avenue.

"Q Cedarhurst Sewer?

"A Vincent O'Reilly, Tom Cohill finished it.

"Q Johnson Avenue Sewer?

"A James O'Reilly.

"Q Johnson and Morgan Avenue, Brooklyn?

"A Johnson Avenue Sewers, Jimmy O'Reilly.

"Q Rockaway job, 1966?

"A A combination of the three, Mike Paterno, Jimmy O'Reilly and Tom Cohill spread out three different locations.

"Q Johnson and Morgan Avenue, Brooklyn?

"A Jimmy O'Reilly.

"Q Rockaway Boulevard, 77th Street?

"A That is the same, that is Michael Paterno, Jimmy O'Reilly, Tom Cohill.

"Q In the case of John Aurrichio, I show you an invoice dated March 31, 1965; do you recognize that invoice?

"A I recognize a John Aurrichio invoice, yes.

"Q Do you know John Aurrichio?

"A No.

"Q Do you know anybody working for John Aurrichio?

"A No.

"Q Do you know how Aurrichio was hired to work for you?

"A Through Taff.

"Q What foreman would hire Aurrichio for this

particular job and what is the name?

"A Juniper Boulevard job; the super is Jimmy O'Reilly.

"Q Would he know John Aurrichio?

"A If he drove his truck, I imagine he would know him, yes.

"Q In other words, you hired Mr. Taff? Taff sent this man over?

"A Right.

"Q And who provided a chauffeur?

"A John Aurrichio.

"Q Who contacted John Aurrichio?

"A Probably Taff.

"Q Do you know John Aurrichio?

"A No, sir.

"Q What services were performed?

"A Billing to Chauffeur trucks complete.

"Q Who contacted Michael Catenzaro?

"A I have no idea.

"Q Do you know Michael Catenzaro?

"A No, sir.

"Q You have previously stated that Aurrichio may have been hired through Taff Trucking?

"A Yes.

"Q Was Catenzaro hired through Taff Trucking?

"A Probably.

Q Who did you contact or who would be contacted in Taff Trucking?

"A The principal's name is Ten Minnichino, M-i-n-n-i-c-h-i-n-o.

"Q Who would contact Michael Catenzaro?

"A Another truckman or the job super.

"Q Who would be another truckman that would contact him?

"A Could be Taff Trucking; could be Sam La Spina, or our job super.

"Q Who is Sam La Spina?

"A Samuel La Spina, L-a S-p-i-n-a.

"Q Do you know anybody -- do you know John Aurrichio, by any chance?

"A Aurrichio.

"Q Yes.

"A No,s ir, I don't know a John Aurrichio.

"Q Do you know Michael Catenzaro?

"A No, sir.

"Q Do you know Arthur Lazravitch?

"A No, sir.

"Q Do you know Thomas Tuccella?

"A No, sir.

"Q Do you know anybody connected with them?

"A There's a firm in Queens, Aurrichio and Tuccella.

"Q Aurrichio?

"A Yes, there's a firm in Queens by the name of Aurrichio and Tuccella. I think they're located in College Point or Whitestone -- Sonny Aurrichio and Jack Tuccella, I know."

H A N S C L A U S E N, called as a witness on behalf of the government, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SILVERMAN:

Q Mr. Clausen, may I please request, sir, to keep your voice up so that the people in the back will be able to hear you, sir.

A Yes.

Q What is your full name, sir?

A Hans Clausen.

Q And what is your occupation?

A I am a civil engineer.

Q And where are you employed?

A Charles R. Velzy.

Q What type of rirms is Charles Velzy, sir?

A We are consulting engineers specializing in sanitary engineering.

Q How long have you been employed by this firm, sir?

A Since '59.

Q Do you hold any professional licenses?

A I am licensed in the State of New York.

Q What type of work do you perform for Velzy, for the firm?

A Presently I perform design work.

Q Have you ever performed any work as what they call a resident engineer?

A Yes.

Q What are the responsibilities of a resident engineer?

MR. BRILL: Could I object to that, your Honor, for him to ask what his responsibilities were as a resident engineer?

MR. SILVERMAN: I will rephrase it.

Q During the time that you were a resident engineer, Mr. Clausen, what type of responsibilities of work did you generally perform?

A I was mainly inspecting for construction, to make certain that the contractor complies with the specifications.

Q Are you familiar with a firm known as Paterno & Sons, Inc.?

A Yes.

Q And did you work on a job location as a resident engineer on which they were a contractor?

A Yes.

Q Which job location was that, sir?

A Cedarhurst.

Q And what was being built in Cedarhurst?

A Sewage treatment plant.

Q Sewage treatment plant?

A Yes.

Q Was this the plant located on Peninsula Boulevard?

A Yes.

Q Did you work for -- withdrawn.

Did you work on any other location other than the Cedarhurst job where Paterno & Sons were contractor?

A No.

Q Do you recall, sir, when this work took place?

A I beg your pardon?

Q Do you recall in what year or year that this work took place?

A It was late '57 -- '67 and up to about the fall of '68.

Q In relation to this particular job, sir, by whom was your firm retained?

A By the Village of Cedarhurst.

Q And what type of work did you and the firm perform for the Village of Cedarhurst?

A Our company designed the plant and performed the construction supervison.

Q Among your responsibilities at this particular sewage treatment plant did they include, sir, the supervision of the construction that was done by Paterno & Sons, Inc.

A They did.

Q Was it also part of your responsibility at that time to keep a daily log to the activities that went on on those job sites?

A Not necessarily. I was not instructed to do it.

Q Did you maintain a log while you were at the job site?

A I did.

Q How many days a week did you work at this particular job site?

A Five days.

Q Approximately what hours each day did you work?

A It was about 8 o'clock in the morning to about 5 o'clock or 4:30 at night.

Q Do you know the defendant Michael Paterno?

A Yes.

Q On how many occasions did you meet Michael Paterno?

A Maybe three or four times.

Q Were they in relation to this particular job?

A Yes.

Q And where did you meet Mr. Paterno?

A It was in the Village Hall, first of all -- it was, I think, on two or three different occasions; once on the job site.

Q Do you know the defendant George Denti?

A I know him by name.

Q Have you spoken to him?

A No, I didn't.

Q Mr. Clausen, I would like to show you for identification Government's Exhibits 121 and 122 (handing), and ask you if you recognize thos books?

A (After examining) Those are my diaries.

Q With reference to Government's Exhibit 121, for whatyear does that pertain to?

A 1967.

Q With reference to Government's Exhibit 122, what

does that pertain to, what year?

A 1968.

Q Now did you have a chance to look at those journals, sir?

A Yes, I quickly looked at them.

Q Are both those journals in your handwriting?

A Most of them, yes, although I have a couple of pages in here tha somebody substituted for me.

Q But the greater portion of those books are in your handwriting, sir?

A Yes.

Q Which particular job site were these books prepared in relation to?

A Right on the job site.

Q Where?

A Right in our trailer.

Q Was this at the Cedarhurst job site?

A Yes.

MR. SILVERMAN: At this time, if your Honor please, I would like to offer in evidence Government's Exhibits 121 and 122 (handing).

MR. BRILL: I think we are going to need some time to look at these, your Honor. We have never seen them before.

THE COURT: Yes, I understand.

They are being offered with respect to what we talked about before, the days of work, is that it?

MR. SILVERMAN: Yes, your Honor.

THE COURT: Anything else?

MR. SILVERMAN: No, your Honor.

There will only be several of the days that I will be referring to and I can limit to those days; if Mr. Brill wants to look at those pages, I can tell him now.

MR. BRILL: Just from a superficial glance and a very cursory one, it seems to me that there are more than a few pages that we ought to read and I think it would be unfair if we don't read them, so I think we need some time.

THE COURT: Well, I understand that, but in the meantime, in order to use the time that we now have at this moment, why don't you put the particular questions with reference to the particular things you are interested in in those books and you may offer them a page at a time.

MR. SILVERMAN: Thank you, your Honor.

Q Mr. Clausen, I'd like you to look at the 1967 diary, Government's Exhibit 121, and ask you to turn to the page in the book that has the first notation on it, the first date.

Have you found it, sir?

A Yes, sir, I did.

Q What is the date?

A July 13, 1967.

Q Examining that page, Mr. Clausen, can you determine from reading that page whether or not that was the first date when you actually had any contact with this job?

A No, I couldn't.

Q And what is the information that is contained on that page?

MR. BRILL: That's objected to, if your Honor please. It is not in evidence. He should ask some questions with respect to it but that is certainly objected to.

THE COURT: On what ground?

MR. BRILL: On the ground he is now asking for Mr. Clausen to testify to the contents of a book that is not in evidence.

THE COURT: Yes, I understand that. But what is the ground of the objection? Why can't it go into

evidence is the question?

MR. BRILL: I haven't seen it. I don't know the answer to that, Judge.

THE COURT: And what would be your objection to it?

MR. BRILL: I can't tell until I read it.

THE COURT: All right, do you want to put that page in evidence?

MR. SILVERMAN: Yes, your Honor.

THE COURT: Show Mr. Brill and Mr. Rosenthal the page.

MR. BRILL: I have an objection to it, your Honor, because it makes a reference to something which we don't have here.

If your Honor sees it--

THE COURT: Let me ask Mr. Clausen:

Did you write in that book around the dates of the things you were writing about?

THE WITNESS: I beg your pardon?

THE COURT: When did you put these things in that book, did you write in it every day?

THE WITNESS: Yes, I did.

THE COURT: Around the date or on the date that's shown?

THE WITNESS: On that date.

THE COURT: And these were notes respecting your work on this Cedarhurst job?

THE WITNESS: That is correct.

THE COURT: Is there any reason apart from other objections why this should not be received as past recollection recorded -- apart from other objections, relevancy, et cetera, which I am postponing?

Is there any reason why this is not admissible as past recollection recorded? If so, tell me.

MR. BRILL: I would like to think about that, Judge. It is certainly now admissible under the federal records rule, the shopbook rule.

THE COURT: I didn't ask you that. Don't tell me the answer to some other question I didn't ask you.

Maybe I know the answer.

MR. BRILL: I apologize.

THE COURT: I know the answer.

Both books are received subject to motions to strike tomorrow; any portions that are deemed to be inadmissible on some other grounds, and I will give defense counsel full latitude in that respect, and I will require government counsel to particularize specifically all or any pages on which he proposes to rely before the government

rests on its case.

Do you understand?

MR. SILVERMAN: Yes, your Honor. We can do that today.

THE COURT: And I don't want these defendants confronted with pages that they didn't have a chance to think about. I think that's the fair ruling.

You can tell them what pages you rely on, they can tell me what pages they want stricken, and only the pages you rely on or any others defense counsel want to put in may ever be placed before the jury.

That's the ruling.

They are received on that basis.

(Government's Exhibits 121 and 122 received in evidence.)

Q Mr. Clausen, I'd like to refer you to Wednesday, August 30, 1967, and ask you to read from that page the writing that is on that date.

A "10:00 a.m.,72 degrees Fahrenheit,clear. Paterno starts stripping topsoil and places temporary entrance road. Equipment on job, one bulldozer,;men, one dozer operator, one laborer and one foreman. 4:30 p.m., 84 degrees, clear."

I put a note there "bulldozer gets stuck in

excavation."

Q Now, Mr. Clausen, is it correct, sir, that you read at the beginning of the page and towards the end of that page next to a time, the temperature?

A Yes.

Q How did it come about, sir, that you would write the temperature on the page?

A It was not only temperature I was recording. I was recording the general weather conditions.

Q And what was the purpose to your recording the temperature or the weather conditions on this page?

MR. BRILL: Your Honor, I object to his mental operations now as to what his purpose was.

THE COURT: What is the purpose of your trying to elicit this, Mr. Silverman?

MR. SILVERMAN: Your Honor, I want to show the reason why Mr. Clausen wrote these down in that he was required to, as the provisions of the contract, when certain days it got below a particular temperature, the contractor was given an extension of the contract to operate so it was his responsibility to keep tabulation of the temperature and as to whether or not the people were working or were not working on a particular day.

THE COURT: Do you, Mr. Brill, apart from our

subtle rules about evidence, do you know any way this would be prejudicial, the information Mr. Silverman is trying to elicit?

MR. BRILL: I honestly can't say, Judge, because I really don't know. This is all new to me.

THE COURT: Well, we both have to grope the best way we can, but with our combined experience and years we can manage somehow.

I will allow it.

MR. BRILL: Your Honor is in a better position than I am.

THE COURT: All right.

Q Mr. Clausen, why did you indicate on the pages the temperature?

A Because it was significant, more or less, for the operations of the job. A contractor did have one year, I guess, or exact number of days for completion. Now, there might be some days he would not be able to work, certainly not due to his fault, and certain weather conditions would enter into granting extension of time.

Q Mr. Clausen, I would like you to turn to the date Monday, December 11, 1967.

Is there any writing on that page, sir?

A I beg your pardon?

Q Is there any writing on that page?

A Yes.

Q Is it your handwriting, sir?

A Yes.

Q Could you please read to the jury what is written on that page?

A 8 a.m., 36 degrees Fahrenheit, rain.

Q I am sorry, I didn't hear that sir.

A Rain.

2 p.m., 36 degrees Fahrenheit, rain.

And 4 p.m. the same.

Q Is there any other writing on that page?

A All contractors sent their men home.

Q By examining that page, sir, does it refresh your recollection as to whether or not there were any contractors working on that job site on that day?

A I couldn't recollect it. I entered here -- this refers to the labor force --

THE COURT: Look, Mr. Silverman, rightly or wrongly I have allowed this as best recollection recorded, and for you to go back and forth with this refreshment of recollection with which we lawyers kid ourselves occasionally, is somewhat at cross purposes.

MR. SILVERMAN: All right, your Honor.

BY MR. SILVERMAN:

Q Mr. Clausen, these notations on these pages that you have there, when were the notations put on the pages?

A Mostly the same day.

Q Were there any occasions, sir, when you put them on the following day?

A It is a possibility, maybe once in a while, but not as a normal operation.

Q I would like you to turn, sir, to Tuesday, December 12, 1967.

Are there any notations written on that page, sir?

A Yes.

Q Will you please read them, sir?

A 8 a.m., 43 degrees, rain.

2 p.m., 49 degrees, rain.

3:30 p.m., clear.

4 p.m., 50 degrees and clear.

No contractor --

MR. BRILL: I am sorry, I missed the last part.

A (Continuing) 4 p.m., 50 degrees Fahrenheit, clear.

No contractor has men working.

Paterno started at 8 a.m., stops at 8:30 a.m.

Q Is there any other writing on that page, sir?

A No, sir.

Q Is that writing in your handwriting?

A Yes.

Q I would like you to look at Government's Exhibit 122, the other book, sir. What is the date of the first entry made in that book, sir?

A January 2nd.

Q What year, sir?

A 1968.

Q Is the writing on thatpage, sir, in your handwriting?

A Yes.

Q Will you please read the writing on that page?

A 8 a.m., 9 degrees Fahrenheit, clear.

2 p.m., 24 degrees Fahrenheit, clear.

4 p.m., 24 degrees Fahrenheit, clear.

None of the contractors is working because of the low temperatures.

MR. SILVERMAN: In view of the court's position, the government only intends to offer into evidence out of these two books the pages that I have already had Mr. Clausen read from.

THE COURT: Which are four pages?

MR. SILVERMAN: Which are four pages, your Honor.

I have no further questions of this witness.

MR. BRILL: I think I would have to look at the book before I could hope to begin what might be called intelligently cross examination.

THE COURT: All right, then we will stop for the day and we will resume at 9:45, and we will have to ask Mr. Clausen to come back tomorrow.

All right, I think that is it.

(Jurors left the courtroom.)

MR. SILVERMAN: Your Honor, I have requested from Mr. Brill besides the ledgers that I have been provided,

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I have requested him to produce five of the checks that are listed in the cash disbursements book and their accompanying invoices to these checks.

I made that request this morning, your Honor, and I believe Mr. Brill informed me that they now find invoices but do not find the checks.

MR. BRILL: We have found the invoices, Judge. We have not yet found the checks.

THE COURT: Who looked for them?

MR. BRILL: I don't know. I will have to find out.

MR. DENTI: I did, sir. I went up to the hotel room during lunch hour where we have had this information. I called them up and --

THE COURT: To what year do those invoices relate?

MR. BRILL: 1970, your Honor.

MR. SILVERMAN: And 1971.

MR. BRILL: The first id dated September 30, 1970.

I guess it should be marked for identification, shouldn't it?

THE COURT: All right, mark it for identification.

How do you want them marked, as Defendants' Exhibits or Government's Exhibits?

MR. SILVERMAN: They are going to be Government's Exhibits, your Honor.

THE COURT: All right, mark them as Government's Exhibits.

MR. SILVERMAN: Start at No. 200, if that will be of assistance to you.

(Government's Exhibit 200 was marked for identification.)

MR. BRILL: 201 is likewise dated September 30, 1970, your Honor.

(Government's Exhibit 201 was marked for identification.)

MR. BRILL: 202 is dated November 10, 1970.

(Government's Exhibit 202 was marked for identification.)

MR. BRILL: 203 for identification does not have a date but it is a bill for the month of November 1970. It bears the stamp date, received December 4, 1970.

(Government's Exhibit 203 was marked for identification.)

MR. BRILL: And 204, your Honor, is dated December 15, 1970.

(Government's Exhibit 204 was marked for identification.)

THE COURT: Do I understand that the corporation's cancelled checks for 1970 and 1971 are now in some hotel

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room?

MR. BRILL: These were part of the records, your Honor, that were brought down pursuant to that last subpoena which was returnable the day of the beginning of the trial. For convenience --

THE COURT: Is the answer yes?

MR. BRILL: Yes, they are in a hotel room.

THE COURT: And all the cancelled checks for 1970 and 1971 are in this hotel room?

MR. BRILL: Well, we hope they are.

THE COURT: You hope they are?

MR. BRILL: Yes.

THE COURT: That in response to the subpoena Mr. Denti has gone through them and has found no check corresponding to any of these five invoices?

MR.BRILL: Not yet he has not. No, sir, that is my understanding.

THE COURT:Is that your understanding?

THE COURT: Well, the government is entitled to have the search made and is entitled to interrogate an agent of the corporation as to compliance or non-compliance with the subpoena.

I suppose the position is very simply this, either the checks are produced in the morning, or if

Mr. Silverman wants it, we will get an explanation under oath of why they are not produced, and if it is thought to be material that explanation will be put before the jury, but I trust it is not going to be material or necessary.

Is there anything else I ought to do about this?

MR. SILVERMAN: Yes,your Honor.

The government intends to offer in its direct case these checks and the accompanying invoices.

The government intends to conclude with its witnesses tomorrow --

THE COURT: I am asking what else do you want me to do at this point?

MR. SILVERMAN: Well, I would like the Court to give the government the opportunity if the government rests tomorrow morning, and if the checks are subsequently found, to introduce the checks in evidence in the government's direct case.

THE COURT: I assume that if you want these checks it is not going to turn out that all five of them a-re missing, and I assume they will be here in the morning.

If they are not here in the morning you tell me what you want me to do about that bridge when we get to crossing it.

MR. SILVERMAN: Fine, your Honor.

THE COURT: And it is up to you to do the necessary explanation of why they are not here, if they are not here, and I leave that to you, and then I will rule on what we will do if you do not produce them, but I trust you will produce them.

All right, 9:45 gentlemen.

MR. BRILL: Can we mark these other checks we have agreed upon at the side bar in your Honor's absence?

THE COURT: Surely. Mark them for identification, and you can put them in evidence in the morning.

MR. BRILL: Will you mark this for identification as U-1.

(Defendants' Exhibit U-1 was marked for identification.)

MR. BRILL: U-1 for identification is the cash disbursements for the fiscal year ended February 28, 1966.

Will you mark this as Defendants' Exhibit U-2 for identification.

(Defendants' Exhibit U-2 was marked for identification.)

MR. BRILL: U-2 for identification, cash disbursements for the fiscal year beginning March 1, 1966, ended February 28, 1967.

Will you mark this for identification as U-3.

(Defendants' Exhibit U-3 was marked for identification.)

MR.BRILL: U-3 for identification, cash disbursements beginning March 1, 1967, fiscal year ended February 28, 1968.

Will you mark this as Defendants' Exhibit U-4 for identification.

(Defendants' Exhibit U-4 was marked for identification.)

MR. BRILL: U-4 for identification is the cash disbursements for the fiscal year beginning March 1, 1968, ended February 28, 1969.

Will you mark this for identification as U-5.

(Defendants' Exhibit U-5 was marked for identification.)

MR. BRILL: U-5 for identification, cash disbursements book beginning March 1, 1969 and ended February 28, 1970.

(Adjourned to Friday, February 15, 1974, at 9:45 a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
William S. Oberg (Resumed)		904	932 939	937
Paul V. Sheehan	940	952	962	
Mae Nunkin	962	989		
Rose Muscatello	1004	1015		
Louise Ferraro	1022	1060		
Hans Clausen	1093			

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U-3 through U-5	1115	
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122		1103
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United States of America

v. 73 Cr. 410

Michael Paterno, George Denti
and Paterno & Sons, Inc.

February 15, 1974
9:45 a.m.

(Trial resumed.)

THE COURT: Okay, I guess we are ready.

MR. SILVERMAN: Yes, your Honor.

(In open court, jury present.)

THE COURT: Good morning.

H A N S C L A U S E N, resumed:

CROSS-EXAMINATION BY MR. BRILL:

Q Would you be good enough to tell me how you like to pronounce your name?

A I beg your pardon?

Q Would you be good enough to tell me how you like to pronounce your name?

A Clausen.

Q Mr. Clausen, you were an employee of the Village of Cedarhurst, were you?

A No.

Q The firm by which you were employed were the consulting engineers employed by the Village of Cedarhurst, is that correct?

A That's correct.

Q And as the consulting engineers, they had a responsibility under their arrangement for the Village of Cedarhurst to supervise the construction of the sewage treatment plant at Cedarhurst?

A That's correct.

Q And you, prior to that time, had you ever done a field job?

A Yes, I did but not in the United States.

Q Not in the United States?

A No.

Q You were not trained as an engineer in this country, were you, Mr. Clausen?

A No, I wasn't.

Q Where were you trained, sir?

A Germany.

Q Up to the time that you did the field job at Cedarhurst, had youdone previous field jobs?

A Yes, I did.

Q In the United States?

A No. I worked as a surveyor, but not in relation to construction; it was property surveys.

Q Have you done any field jobs since the Cedarhurst job?

A No.

Q So that was your first and only one?

A Yes, sir.

Q All right, sir.

Now, you have told us yesterday in substance that you first visited the job site in July of 1967, is that correct?

A I personally did visit the job site before because I worked on the report for a design and I worked on a design.

Q I beg your pardon, Mr. Clausen. I meant to say in connection with--

THE COURT: Now, look, Mr. Brill, I didn't remember his saying that yesterday either, and I do not know what the jury remembers, and you and I have worked together a great deal and before we conclude our lon[illegible]lives together, I hope I can get you to stop paraphrasing testimony that's already in the record.

MR. BRILL: Your Honor is succeeding. If your Honor will excuse me, I have to put this transcript together.

They were having trouble with their machine. It will only take a few minutes.

Q Was July 13, 1967 the first date on which you met anyone connected with Paterno & Sons, Incorporated on the job site?

A On the job site, yes.

Q That's what I was trying to get to. And between that date and the next date that you described, August 30, 1967, did you visit the job site?

A I myself?

Q Yes.

A I wouldn't know.

Q Would you be good enough to look at this, please, and tell us?

A There was -- yes, July 17.

Q All right, sir.

Now, by that time had you seen any equipment on the job site?

A No, not according to my diary.

Q Not according to your diary.

Do you have any independent recollection as to whether there was any equipment on the job site by that date? August -- whatever the date was, between those two dates?

A July 13th and August?

Q Yes.

A I'm sorry, I looked here, July 17th.

Q All right, Mr. Clausen.

A August 30th, according to my diary.

Q Now, you made no entry in this unofficial diary which you were not required to keep between July 27th and August 30th, is that correct?

A That's correct.

Q Did you have another assignment between those dates for your employer Charles Velzy?

A Yes, I did.

Q During that period?

A Yes, I did.

Q And you didn't visit this particular job site?

A I am not 100% sure now. I thought I visited it but not--

Q But you didn't make any entry?

A I didn't make any entry.

Q And you don't know whether or not during that period there was equipment moved onto the job site by Paterno & Sons, Incorporated?

A No, I don't know.

Q You do know, of course, do you not, that there

was equipment on that job brought there by Paterno & Sons, Incorporated?

A Eventually, yes.

MR. SILVERMAN: Objection, your Honor.

What period of time is Mr. Brill referring to now?

MR. BRILL: I am not limiting him to any time, your Honor.

THE COURT: At some time.

Do you know that?

THE WITNESS: Yes.

THE COURT: I will allow it.

MR. BRILL: Thank you.

Q Can you give us some description of the equipment that was brought onto that job site that you saw there, brought there or caused to be brought there by Paterno & Sons, Incorporated?

A Back hose --

THE COURT: Is that within the scope of the direct, Mr. Brill, and is it relevant?

MR. BRILL: It is relevant.

THE COURT: Can you say why?

MR. BRILL: Yes, sir, I can.

THE COURT: Why is it relevant?

MR. BRILL: Because I want to establish that there was work done and that there was trucking done, there was excavation done and it is relevant to the issues as to whether or not these deductions for that kind of work were properly taken.

THE COURT: I don't think there is any issue on that subject, that there was work done, is there?

Does the government have--

MR. SILVERMAN: The government concedes Paterno & Sons worked there.

THE COURT: I didn't think at this date in the seventh day of this trial there is any question about that.

All the testimony on direct was about, I am trying to see that we move along here, was about four particular days on which according to his diary there was no work.

He hasn't said there wasn't any work and we don't need to range across that.

MR. BRILL: I am willing to make--

THE COURT: Wait a second. Let me finish these obsdrvations. I want you to confine your cross reasonably to the scope of the direct and I rule that the general questions of whether there was work or equipment are

irrelevant and not disputed.

Now please tailor your cross-examination accordingly.

MR. BRILL: May I make him my witness for the purposes of establishing--

THE COURT: No, you may not, but I am trying to get this trial to move along.

If you wish to call him, you may call him.

MR. BRILL: Will your Honor permit me to develop through this witness the different kinds of work that were done on that job site?

THE COURT: I will not, no. If they become material to your case, you may adduce them later in due course.

I want you now to conduct the cross-examination as I have defined it in familiar terms for you. Now proceed in that fashion.

MR. BRILL: I respectfully except.

Q Mr. Clausen, have you and I ever talked about this case?

A No, sir.

Q Or about that job site and the work done on it at Cedarhurst?

A Not to my knowledge.

Q When you say "not to your knowledge," is that a qualification?

A No, this goes back quite a few years and I am certain I didn't talk to you.

MR. BRILL: Will your Honor indulge me a moment?

THE COURT: Sure.

(Pause.)

Q Mr. Clausen, on the dates concerning which you gave testimony on your direct examination, and to which I am confined, can you say that there were no other persons on any one of tose dates who were employees of Paterno & Sons Incorporated beyond that half-hour period that you described yesterday?

MR. SILVERMAN: Objection, your Honor.

As I recollect it, he described only a half-hour period on one particular day.

If Mr. Brill has a question about one particular day, let him address himself to that particular day.

THE COURT: Yes, I think you are talking about December 12, 1967?

MR. BRILL: That's one of the dates concerning which he testified.

THE COURT: Is that the date with respect to which he referred to a half-hour period?

MR. BRILL: That's the day I believe he referred to a half-hour period.

THE COURT: Mr. Silverman is suggesting if that is what you are asking about, you should specify the day. I think you should.

MR. BRILL: Am I limited to the one day, your Honor? I didn't understand that to be the ruling.

THE COURT: If you are going to talk about the date with respect to which he talked about a half-hour period, Mr. Silverman says there was only one such date. You have the diary before you, you have us at a disadvantage.

My notes, which are not authoritative, indicate that there was only one such date. If there were more, please indicate which they were and address yourself to them.

Q On the date concerning which you testified that Paterno employees left at 8:30, can you say that there were no Paterno & Sons employees on that job site after 8:30 a.m.?

A No, sir.

Q Beg your pardon, sir?

A No.

Q On the preceding date, December 11th, another

date on which you testified that all contractors sent their men home, can you say that there were no employees of Paterno & Sons,Inc. on the job site on that dae?

A No, sir.

Q On the day of January 2nd, 1968, concerning which you testified that none of the contractors were working, can you say that none of the-- that there were no employees of Paterno & Sons, Inc. on the job site all that day?

A No, sir.

Q Those three dates about which you said there was no work done, is that correct --

A If I refer to work done, I am talking about specifically --

Q I'm sorry, I can't hear you.

A My reference to work done refers to positive construction work. It does not necessarily mean that people are loafing around, if anybody is around.

Q What you are saying-- I don't want to paraphrase what you are saying -- would you be good enough to clarify for me, please, whether you are saying that there were no men employed by Paterno & Sons, Inc. who were working on any one of those three dates?

A My reference is basically to enable us and anybody we know, the foreman, in my diary --

Q And your diary is not a complete diary, is it?

A From my point of view, for our purposes, it was a complete diary.

Q For your purposes?

A Yes.

Q But it was not intended to reflect the amount of equipment that was on the job, was it?

A No, sir.

Q Or the number of trucks that came to the job?

A No.

Q For Paterno & Sons, Incorporated's purposes?

A No, sir.

Q In connection with that job?

A No, sir.

Q Was that job one that was given to Paterno & Sons as a result of competitive bidding?

A Yes, sir -- yes.

Q And was that job, Mr. Clausen, under your supervision satisfactorily completed insofar as the responsibilities of Paterno & Sons were involved?

A Yes, sir.

Q On the dates that you reflected in your diaries you showed the temperatures at three different hours of the day?

A Uh-huh.

Q Did you remain on the job site all day long to record the temperature on each of those dates?

A I did remain on the job site recording the temperatures. The temperatures were given to me by the operators.

Q You personally did not observe the temperatures?

A No, I didn't.

Q This is something that somebody else furnished you?

A This is something which has to be done in the treatment plant anyhow.

Q No, I am asking you if this is something that somebody else furnished you.

A That is correct.

Q And you did not verify it?

A I might have verified it, checked it some days.

Q But you cannot say for certain as you sit there now, under oath, that you actually verified the temperatures on the dates concerning which you testified --

A No, sir.

Q -- isn't that true?

A That's true.

Q You told us the references that you made and the notes which you made in Exhibits 121 and 122 were for your purposes; correct?

A That's correct.

Q They do not reflect work which did not come within the scope of what you were supervising on that job site?

A Yes,sir.

Q Work done by Paterno & Sons, for example.

A It --

THE COURT: Wait just a second. Are you able to say what existed that is not covered by your notes? You don't know one way or another.

THE WITNESS: No.

THE COURT: All right.

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Q Do you know from your own observations whether there was the cleaning up of debris on the job site?

A There was.

Q By Paterno & Sons, Inc.?

A There was.

Q And did they use trucks in connection with that?

A They might have.

Q Do you say that they didn't?

A I am not saying that they didn't. I cannot --

Q Within your own observation did you see debris being removed?

A I saw it removed.

Q Was it hand-carried off the job site?

A Depending on the size, it was not carried off the job site.

Q Were you a resident in or about the Village of Cedarhurst, Mr. Clausen?

A No.

Q Did you know a trucker named Cohen in Cedarhurst?

A No.

Q Did you ever see any of the trucks on the job site?

A I cannot remember whether I did or did not.

Q I invite your attention to your diary for April 24th

Exhibit 122 -- April 24, 1968. Do you indicate --

A I am sorry to interrupt, this is not -- these are not my notes. Somebody was substituting for me on that date.

Q Oh, I see. Was there a period of about three or four weeks when you were not actually on the job site?

A That is correct.

Q. And was it from this period beginning April 12th, 1968 to some time in the beginning of May 1968?

A. That is correct.

Q So you don't know what happened there at that time?

A No.

Q And you are not able to say what was removed, if anything; right?

A That's correct.

Q Now you were there, however, on June 17, 1968, were you not, according to your handwritten diary (indicating)?

A Yes.

Q Do you make some indication that there was material removed from the job site by Paterno & Sons, Inc. -- equipment or equipment obtained by them for that purpose?

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A No, I don't.

MR. BRILL: Will you please mark this for identification.

(Document marked Defendants' Exhibit AP for identification.)

BY MR. BRILL:

Q Would you be good enough, Mr. Clausen, to look at Exhibit AP for identification and tell us whether it refreshes your recollection as to whether on Monday, June 17, 1968, and also on Thursday, June 20, 1968 -- and please look at both of those pages -- whether there was material removed from the job site by a trucker on behalf of Paterno & Sons, Inc.

A (After examining) There is no entry --

THE COURT: No. He is just asking you, does that refresh your recollection? Do you have a memory of what he has spoken about, after you have looked at it?

THE WITNESS: I do not remember it after seeing my diary.

THE COURT: All right, that is the answer. The answer is "no".

Next question.

Q From the entries which you made on those two dates, is there any indication to you that there was

material that was required to be removed from the job site on those dates?

A There is no indication on Monday, June 17th.

There is some reference -- there is a reference to it on June 20th.

Q There is a reference to the removal of material on June 20th?

A Yes, sir.

Q Is there a reference as to the manner in which it was moved off?

A No.

Q Is there a reference as to the amount of material that was moved off?

A No.

Q Now prior to June 17th, a couple of days before that and during the immediately preceding week you were at the job, were you not?

A Yes.

Q Did you find that there was a reference or did you make a reference in your notes with respect to material that was required to be moved off the job site?

A (After examining) I see the reference on June 13th.

Q Indicating that there was material required to

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be removed off the job site?

A No, it says "Cleans the site".

Q "Cleans the site". And what does that mean to you, sir?

A It could mean general cleaning, removing debris; it could mean many things.

Q Or sludge or other matter?

A It could be anything.

Q Would it involve truckloads of material?

A It could.

Q I may have asked you this before, Mr. Clausen, but will you tell us if you, as the supervising engineer was satisfied that Paterno & Sons complied with the specifications and the requirements of the contract?

A Yes, sir.

Q And they did that in a satisfactory manner.

MR. SILVERMAN: Objection, your Honor. It has been asked many times.

THE COURT: Yes. It was not relevant the first time. Sustained.

MR. BRILL: I respectfully except.

I have no further questions.

MR. ROSENTHAL: I have no questions.

THE COURT: Any redirect?

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MR. SILVERMAN: I would just like to look at the diary.

MR. BRILL: I am just removing these clips and papers.

I think there is another bill in there, Mr. Silverman. Do you want me to take those clips off?

MR. SILVERMAN: All right.

(Mr. Brill removes.)

REDIRECT EXAMINATION

BY MR. SILVERMAN:

Q Mr. Clausen, I would like to refer you to Monday, December 11, 1971. By examining that page can you tell whether or not -- can you tell what hours you worked on that job on that day?

A I personally did stay from 8 o'clock to about 4:30.

Q The notation after 4 p.m. says "All contractors send their men home."

Does that refer to any particular time of the day?

A I would say for the day.

Q Mr. Clausen, Mr. Brill had asked you a question as to whether or not there were any men from Paterno & Sons, Inc. on the job site. Did your answer to that refer

to their actually being present or did refer to them working?

A It was referring to them being present, maybe working.

Q By examining your books for this day what type of work, if any, was done by any contractor at that site on that date?

MR. BRILL: That is objected to, if your Honor please, because there is nothing in the book that says that, what kind of work was done by anybody.

THE COURT: Well, if the meaning of it is as you state, then the witness must state he does not know.

MR. BRILL: Yes, sir.

THE COURT: You may answer.

A I don't know.

THE COURT: He does not know.

Q Mr. Clausen, you have had an opportunity to look through most of these books, and referring particularly to the pages that are in your handwriting, on the days -- referring ot the days that are in your handwriting, did you make notations in the book as to the type of work that was being conducted on each and every particular day?

A Normally I did.

Q Now referring to the next date, Tuesday, December

12th, the notation, "No contractor has been working. Paterno started at 8 a.m., stops at 8:30 a.m." -- by examining this page can you tell whether or not Paterno & Sons, Inc. performed any work on that particular site, the Cedarhurst job, after 8:30 a.m.?

MR. ROSENTHAL: I object to the form of that question, your Honor, as to whether or not he can tell from that diary entry as to whether or not any work was performed.

THE COURT: I take it the question to mean what does that diary entry mean to him.

MR. SILVERMAN: Yes, your Honor.

THE COURT: I will allow it.

MR. ROSENTHAL: I respectfully except.

A It specifically refers mostly to laborers. It does not refer to every employee of Paterno & Sons.

Q In reference to January 1st -- January 2nd, excuse me, 1968, the entry "None of the contractors is working becauseof the low temperatures", in reference to that particular day were there any employees from Paterno & Sons, Inc. working on that particular day, at that particular job site?

A Not according to this entry.

MR. BRILL: Can you remember that there were -- oh, I am sorry, I thought you had finished. I beg your

pardon.

Q Mr. Clausen, during the period when you were making the entries in these particular journals -- I would like to rephrase that question, Mr. Clausen.

Mr. Clausen, how did this come about that you made the entries in these particular journals?

MR. BRILL: I am going to object to that, if your Honor please. He said it was a personal decision, he so told us.

THE COURT: I will sustain it.

MR. SILVERMAN: I have no further questions, your Honor.

RECROSS EXAMINATION

BY MR. BRILL:

Q With respect to that last date, January 2, 1968, can you say of your own independent recollection, inasmuch as there is no entry to assist you, that there were no employees of Paterno & Sons, Inc. working on that date?

A Not from my recollection I could not say so.

MR. BRILL: Thank you, sir.

MR. ROSENTHAL: May I ask a few questions as a result of the redirect?

THE COURT: Yes.

RECROSS EXAMINATION

BY MR. ROSENTHAL:

Q Mr. Clausen, you are familiar with the fact that contractors frequently rent their equipment?

A Yes, sir.

Q And that when they rent equipment they get the operator or the driver of the equipment together with the equipment?

A Yes, sir.

Q That is furnished by the suppler.

A Uh-huh.

Q And such a person -- and any rented equipment or rented trucks would not be an employee of Paterno & Sons, would they?

A They would not.

MR. ROSENTHAL: Thank you.

MR. SILVERMAN: No further questions, your Honor.

THE COURT: All right, Mr. Clausen.

(Witness excused.)

J A M E S O ' R E I L L Y, called as a witness by the government, having been first duly sworn, testified as follows:

MR. SILVERMAN: Your Honor, may counsel approach the bench at this time?

THE COURT: Come up.

(At the side bar.)

MR. SILVERMAN: Your Honor, I have not had the opportunity of speaking to this witness. In his appearance before the grand jury he invoked his Fifth Amendment privilege and was thereby granted immunity against prosecution.

I have an application. If this witness is going to invoke his privilege at this time -- I do not know what his position is going to be, but if he is going to invoke his privilege, in all fairness, under your Honor's ruling, I think it should be done outside the presence of the jury. If the Court wants to excuse the jury in order to inquire of the witness, or does the Court want me to go ahead and ask questions. I do not know what his answer is going to be.

MR. BRILL: Judge, there must be, conservatively, 75 or 100 pages of grand jury testimony, in addition to a long Q and A -- I think it was a Q and A taken by Internal

Revenue agents of this witness both before and after he was conferred immunity. I have no intention of asking about that.

THE COURT: Mr. Brill, I do not think you are addressing yourself to the very simple question. Mr. Silverman quite properly and quite desiredly asked whether we want the jury excused to determine whether the witness is going to invoke his privilege.

MR. BRILL: Oh!

THE COURT: Do you wish the jury excused or not? That is the only question.

MR. BRILL: Oh, all right.

THE COURT: Do you share that view, Mr. Rosenthal?

MR. ROSENTHAL: Yes.

(In open court.)

THE COURT: Ladies and gentlemen, we will give you five minutes.

(Jury leaves the courtroom.)

THE COURT: All right, we are ready. You may inquire.

DIRECT EXAMINATION

BY MR. SILVERMAN:

Q Mr. O'Reilly, wehave never spoken before today on the substance in this case, is that correct?

A That is correct.

Q In your appearance before the grand jury at that time you invoked your constitutional privileges and were given immunity against prosecution by the use of those answers; is that correct, sir?

A Yes.

Q I am now going to ask you questions in relation to matters pending before this court.

At this time are you going to invoke your constitutional privileges or will you testify?

A I will testify.

Q So it will not be necessary to compel your testimony at this time?

A No.

Q -- is that correct? And that refers to each and every question that I will be asking you.

A Yes, I guess so.

Q And you are aware, sir, that you are named as a co-conspirator?

A I heard that but I never been officially notified by anybody of that.

Q But you are aware of that?

A I have heard it, yes.

Q Are you also aware that anything you say may be

used against you in a criminal proceeding?

A Yes, I guess so.

Q You are also aware that you have an opportunity to consult with an attorney and to have an attorney present with you if you wish?

A I guess so, yes.

Q And also you are aware that anything you say can be used against you in a criminal proceeding?

A Yes, sir.

MR. BRILL: Would your Honor be good enough to apprise the witness that the testimony which he gave pursuant to the immunity conferred upon him and any leads arising therefrom cannot be used against him?

THE COURT: He has already been advised on that. He has been given immunity.

MR. BRILL: I did not understand that.

THE COURT: Weren't you?

THE WITNESS: Well, I am not understanding now what is happening.

At the time of the grand jury, yes, but I really do not understand what Mr. Brill said.

THE COURT: Mr. Brill said that the testimony that you gave before the grand jury when you were given immunity --

THE WITNESS: Yes.

THE COURT: -- and leads from it cannot be used against you hereafter.

THE WITNESS: Oh, I see.

In other words, only anything that I would say here.

THE COURT: As things stand now, things that you say here could be used against you.

THE WITNESS: Oh, I understand.

THE COURT: Now do you plan to invoke your privilege?

THE WITNESS: I don't think so.

THE COURT: Well, are you pretty sure?

THE WITNESS: I have to answer. I will say "no".

THE COURT: Well, Mr. Silverman, is there some reason why you do not desire to give Mr. O'Reilly here the same immunity that you had before the grand jury?

MR. SILVERMAN: No, your Honor.

THE COURT: So let us make the situation clear to you, Mr. O'Reilly.

I would suppose that if you consulted a lawyer -- did you?

THE WITNESS: Yes.

THE COURT: Before you went to the grand jury.

THE WITNESS: Not on this thing here, no.

THE COURT: Well, what made you plead your privilege against self-incrimination?

THE WITNESS: I was advised to.

THE COURT: By a lawyer.

THE WITNESS: Yes.

THE COURT: That is what I am asking.

THE WITNESS: Oh, at that time, yes.

THE COURT: Yes.

THE WITNESS: Yes.

THE COURT: I would assume that if you were given that advice by your lawyer before you went before the grand jury, that a lawyer would give you the same advice now.

THE WITNESS: Uh-huh.

THE COURT: Which is to plead y our privilege, and I am advised by the government attorney that if you plead your privilege he will request that you again get immunity, and it seems to me it is in your interests in that situation to plead your privilege and ask for the immunity, and I would advise you that you have the same immunity for this testimony and leads from it as you had before the grand jury; and I would also advise you that that does not make you immune to prosecution from perjury -- you

still have to tell the truth.

THE WITNESS: Yes, I understand that.

THE COURT: You understand everything I said?

THE WITNESS: Yes.

THE COURT: So my suggestion to you --you can do whatever you want -- is that you should plead your privilege.

THE WITNESS: Okay, then I will change and I want immunity.

THE COURT: And I take it, Mr. Silverman, you are authorized to request a grant on that immunity.

MR. SILVERMAN: I have the authorization by the Assistant Attorney General in charge of the Tax Division of the United States Department of Justice.

THE COURT: All right, then I take it everybody is agreed that this is an appropriate situation for the granting of immunity.

MR. SILVERMAN: Yes.

MR. ROSENTHAL: Yes.

MR. BRILL: Yes.

THE COURT: And you are granted it.

All right, then I think we are about ready to proceed, are we not?

Do you want to make that an exhibit of some kind,

Mr. Silverman?

MR. SILVERMAN: Yes, your Honor.

I have an application signed by the United States Attorney, Paul J. Curran, a supporting affidavit signed by myself and the authorization from David A. Wilson, Jr., Acting Assistant Attorney General, Tax Divison.

(Handing to Court.)

THE COURT: I am changine one word in your boiler-plate, Mr. Silverman, since you want me to sign it.

It says this becomes effective only if after the date of this order James O'Reilly refused to testify, et cetera, and I am writing in "after the signing of this order." All right?

MR. SILVERMAN: Yes.

THE COURT: Some technical lawyer might say it could only become effective tomorrow.

MR. SILVERMAN: I wouldn't want that to happen.

THE COURT: No, I didn't think you would.

MR. BRILL: Is that to be marked a a Court exhibit?

THE COURT: Would you like that marked as a Court exhibit?

MR. BRILL: Yes.

(Court Exhibit 2 marked.)

(In open court, jury present)

BY MR. SILVERMAN:

Q Sir, would you please keep your voice up so that the people in the back will be able to hear you?

A Okay.

Q What is your full name, sir?

A James O'Reilly.

Q What is your present occupation, sir?

A Construction superintendent.

Q And by whom are you presently employed?

A Paterno & Sons.

Q How long have you been employed by them, sir?

A About nine or ten years.

Q Mr. O'Reilly, prior to coming into court today, did we have an opportunity to talk about this matter?

A An opportunity?

Q Yes, sir, did we talk about this case?

A No.

Q Were you requested by myself and by Agent Ayres and Agent Rizzo to discuss this case?

A Yes.

Q And what was your response to our requests?

MR. BRILL: I object to it, if your Honor please, as being wholly irrelevant and immaterial.

THE COURT: Overruled.

MR. BRILL: Would your Honor hear me at the side bar for a minute on this?

THE COURT: I believe we have already discussed this in the past.

MR. BRILL: I am not sure that we have.

THE COURT: All right, then, come to the side bar.

(At the side bar.)

MR. BRILL: This witness was examined according to Exhibit 3527 on August 31, 1971 by Agents Ayres and Rizzo and some 246 questions and answers were recorded.

He was later examined on November 16, 1972 as evidenced by Exhibit 3529 where he was examined by Mr. Friedman on behalf of the government before the grand jury, and that testimony consumes 54 pages of transcript.

THE COURT: Without going into all the numbers of pages, tell me the ground of your objection.

MR. BRILL: The ground of my objection is that he has been examined, re-examined and re-examined and there is now sought to be created the impression he has not been examined.

THE COURT: That is not a ground of objection.

What is the evidentiary rule on which you base this objection?

MR. BRILL: Just simple fairness, that's all.

THE COURT: You can bring that out on cross, can you not?

MR. BRILL: I can.

Mr. Silverman--

THE COURT: You can bring it out on cross if you think it is creating an unfair impression.

Mr. Silverman, why do youwant to elicit this?

MR. SILVERMAN: To show his hostility, your Honor.

MR. ROSENTHAL: Now, I submit that that is unfair and improper. There is no rule that I know of that requires a witness or a prospective witness to run at the beck and call of the government.

THE COURT: Okay, you are both eloquent.

I am going to sustain the objection for another reason. I think it gets into --

MR. SILVERMAN: Hold it, Mr. Rosenthal.

THE COURT: I think it gest into murky areas of the privilege. I have just granted him immunity. And he had a perfectly good reason not to talk to you and incriminate himself before he came into court and got immunity.

MR. SILVERMAN: That is not true. Before when I spoke to him, I told him he would be granted immunity and he was still under that immunity.

I don't think the jury is aware he was testifying under immunity.

THE COURT: I am.

MR. SILVERMAN: It is their impression as to whether this individual's state of mind is whether he is

going to cooperate or not.

THE COURT: He is a construction superintendent for a defendant in a case for the last nine or ten years. There are 16 adults in there.

Do you think they are going to think he is your friend?

MR. SILVERMAN: No, your Honor.

THE COURT: Do we have to spend more time on this?

MR. SILVERMAN: I guess not, your Honor.

THE COURT: Okay.

(In open court, jury present.)

THE COURT: I should report and I will, to the jury, that as a result of the conversation, I have changed the ruling and sustained Mr. Brill's objection.

All right, Mr. Silverman.

BY MR. SILVERMAN:

Q Mr. O'Reilly, you said you were a construction supervisor.

A Superintendent, yes.

Q Superintendent. And what are the general responsibilities of a construction superintendent or super that you performed for Paterno & Sons, Inc.?

A Well, generally you are in charge of the job,

you coordinate the job, in essence you are the boss of the job.

Q Mr. O'Reilly, you know Mr. Paterno, is that correct?

A Yes.

Q And you know Mr. Denti?

A Yes.

Q Do you know Mr. Rosenthal?

A Only since here, I saw him here.

Q Do you know Mr. Brill?

A Yes.

Q How long have you known Mr. Brill?

MR. BRILL: I don't think that's material, your Honor, or relevant to the issues.

MR. SILVERMAN: I am laying the foundation for my other questions, your Honor.

THE COURT: It may be relevant. I will allow it.

A Since this thing first started, whatever it was, two or three years ago, a year ago.

Q Has Mr. Brill ever been retained by you?

A I beg your pardon?

Q Has Mr. Brill ever been retained by you? Has he ever been your attorney?

A He represented me prior to me going into the

grand jury.

Q Now, during the time that you worked for the corporation, what was Mr. Paterno's position in the corporation?

A He was the owner.

Q And did he have an office title?

A President.

Q What about Mr. Denti, what was his position during the time you were there?

A He was the office manager and he was in charge of equipment and the shop and maintenance of equipment.

Q Did he have an office title, to your knowledge?

A Something, secretary-treasurer, I am not sure which, I don't know.

Q Mr. O'Reilly, what type of construction work did Paterno & Sons, Inc. perform during the years 1965 to 1970?

A Mostly sewer work, some sewage treatment plant work.

Q Now, did they perform all the work themselves or did parts of the job that they worked on, did they sub-contract out to other individuals?

A Parts of the job would be sub-contracted out.

Q And what types of sub-contractors, what categories

of sub-contractors did work for Paterno & Sons, Inc. on these jobs?

A Pile driving, reinforcing steel, sometimes electrical work, plumbing work, mechanical -- well, in the plants, you know, you have mechanical work and, oh, different trades, maybe -- the plant and the sewer were different. The plant has many more trades involved.

Q Mr. O'Reilly, who at the firm was responsible for hiring these sub-contractors?

A I would think Mr. Paterno.

Q I am not asking you what you think, sir. Of your own knowledge.

A Mr. Paterno.

Q And who was responsible-- withdraw that.

Did Paterno & Sons, Inc. do their own trucking work or did they hire truckers?

A Mostly hired trucks, yes.

Q What type of work did these truckers perform? I am referring specifically, sir, to dump trucks.

A Well, they were involved in the excavation of the job, hauling material from the job.

Q Will you please speak a little louder, sir?

A They were involved in hauling material, hauling earth, excavated earth was put on their trucks and they

hauled it away to a dump.

Q You just said that the dirt was put on their trucks. Did each truck-- I am referring to dump trucks-- that came to the job sites to haul fill, did each one of those trucks come with a driver or did the company provide the driver?

A No, you hired the truck and the driver together.

Q Now, when the truck came to the job site, did the trucker, besides driving the truck, did he perform any other work at the job site?

A No.

Q How did the dirt get from the ground into the truck?

A It would be dug by machinery, excavation equipment.

Q Now, are you familiar with a piece of equipment known as a back hoe?

A Yes, I am.

Q Is that sort of like a little tractor with a big scoop at the end of it?

A It could be little or it could be big. There are big back hoes and small back hoes.

Q Is the back hoe a type of piece of equipment that is used to put the dirt from the ground into these

dump trucks?

A Yes, it is.

Q Who operates the back hoe?

A There are two men on it, if it is a big back hoe, it would be an engineer and an oiler. If it is a small back hoe, there would be only one man.

Q Now, the person that is operating this back hoe, is he an employee of Paterno & Sons, Inc.?

A Most times, unless it is a rented piece of equipment.

Q Now, on the occasions when these dump trucks worked for Paterno & Sons, Inc., in any of the job sites that you worked on, did you ever see a truck being loaded by a driver of the truck?

A No.

Q So in each and every instance you saw the person who was operating this back hoe, or some type of excavating equipment, loading the truck?

A Yes.

Q Now, the truckers that worked for Paterno & Sons, Inc., on what type of basis were they hired; were they hired by the day or by the month or by the year? How were they hired, sir?

A They were hired by the day.

Q When these trucks were hired, did they report on a particular day -- did they report to the job site or did they report to the offices of Paterno & Sons, Inc.?

A No, reported to the job site.

Q Who at the job site was responsible for accounting for the various types of equipment that were rented by Paterno & Sons, Inc.?

A The superintendent.

Q In other words, sir, at the job sites where you were the superintendent, you were responsible for the equipment that was rented by the company?

A That's right.

Q Now, at the job sites where you were superintendent, what system did you use in order to account for the number of trucks that were used by the corporation at that particular job site?

A I assume you are talking years back.

Q I am talking for the years 1965 through 1970.

A I would say between 1965 and 1969. I am not sure about 1970 but in that area.

Q That's what I am talking about.

A We would start a job, truckers would contact us, asking when we are going to start, and so forth --

Q That's not my question, sir.

A Oh.

Q My questionis, after, when you were at the job site --

A After the job started?

Q Yes. What system would you use in order to account each day for the number of trucks that worked at a particular job site?

A There would be a daily report that I send in to my office which would have a list of how many trucks were on the job.

At the end of the day, we should-- we are supposed to get a signed ticket, in other words, a truck driver would give one of my people, a foreman or a signalman or me, whoever happened to be there, a ticket; that person would then sign the ticket showing that that truck was there for that day.

Q And did the trucker keep the original and you got a copy or vice versa?

A Generally, yes.

Q So at the end of the day you would have a receipt signed by someone who worked for Paterno & Sons, Inc. that that truck worked at that particular site?

A At the end of the day I would have receipts, but maybe not all of them. Sometimes the laborers keep them

in their pockets and you just don't get them.

Q Now, at the end of the day, what would you do with these receipts?

A I would attach them to the daily report that I send into my office.

Q Would it be sent --

A The ones that I had.

Q The ones that you did have, would they be mailed in or sent in by messenger?

A Both. If someone was going to the yard, if the yard and the office were in the same area, somebody might carry the envelope in with all the papers in it; if not, I would mail it in.

Q Now, on this sheet you say you prepared each day, would you call that a daily report?

A Yes.

Q Now, these daily reports, were they prepared daily or did you fill them out at the end of each week?

A No. Probably fill them out the following morning. In other words, the report for today would be filled out tomorrow morning, assuming it wasn't a Saturday.

Q Now, listed on this daily report, would you list the type of equipment that was used on that particular job site?

A Yes.

Q Would you list on this report the type of work that was done that day?

A In a very general way, on the bottom you just -- you put a general description of the work you did that day, yes.

Q Would you also list on that particular daily sheet the materials that were delivered to the job site?

A Yes.

Q And if there was a receipt for the materials, would you also attach that to the daily sheet?

A Yes, that would be attached.

Q Now, sir, did you work as a superintendent at the Juniper job?

A Yes.

Q Was that job finished by Mr. Cohill?

A Yes, I believe so.

Q In other words, he took over as superintendent for you?

A He took over as superintendent for me, yes.

Q And did you work on the Rockaway job?

A We had three Rockaway jobs.

Q Which one did you work on, sir?

A Well, mostly the one that was-- I caught it in

the middle-- it was like -- 78th - 83rd Street, in that area.

Q Who else-- who worked on the other two Rockaway jobs?

A Tom Cohill and I worked together on one job,and then I worked on the other job, mostly myself.

Q Did Mr. Paterno work as the superintendent or function as the superintendent on the Rockaway job?

A He visited the job, and he was the overall superintendent or -- I mean, you know, if we had problems we went to him to help us solve them.

Q What about Mr. Denti, did he participate in the Rockaway job and the responsibilities of a superintendent?

A No.

Q Did you work on the Johnson-Morgan job, sir?

A Yes.

Q And did Mr. Cohill also work that job?

A Yes, he came after I left.

Q Did you work on the Watson Avenue job?

A Yes.

Q And did you work on the Carmel job?

A Yes.

Q Did you begin the Carmel job or did Mr. Cohill?

A Mr. Cohill.

Q So you took over for him on that job?

A Yes.

Q Did you work at Peninsula Boulevard in Cedarhurst?

A No.

Q Are you familiar with a trucking company by the name of Taff?

A Yes.

Q Who is the gentleman from Taff you know to be the man who runs it or owns it?

A Teddy Minichino.

Q When was the first time that you recall, in what year, was Mr. Minichino working at any job site for Paterno & Sons, Inc.?

A I can't remember the first time, but I would guess about five years ago.

Q About five years ago?

A Yes.

Q So would it be fair to state in 1968 or 1969 --

A Well, it might be a little before that.

Q When do you think, how much before that, sir?

A Maybe six years now.

Q 1967 would be the earliest date?

A Somewhere in that area, yes.

Q Did you ever on any occasion order trucks through Mr. Taff?

A I do now.

Q During the period of 1965 through 1969, during that period,did you ever order any trucks through Mr. Taff?

A I don't believe so, no, not in the sense that we do now; in other words, we order all our trucks through him.

Q I asked you, sir, whether you ordered all your trucks.

A I may have ordered one truck from him, but, I don't know.

Q My question is, on a continual basis during the years 1965 through 1969, did you order trucks through Mr. Minichino?

A I would say no.

Q Do you remember a firm by the name of Tri-County?

A Who?

Q Tri-County.

A No, I don't think so.

Q Mr. O'Reilly, did you appear before the Internal Revenue Service and were you asked questions -- and did you give answers at that time -- by a Mr. Ayres and a Mr. Rizzo?

A Yes.

Q Was there a stenographer present at that time?

A I can't hear you.

Q Was there a stenographer present?

A Yes, there was.

Q I would like you to look at page 18.

Read the page to yourself, sir, and I ask you if that refreshes your recollection as to whether or not a Tri-County --

THE COURT: Is 18 the correct page?

MR. SILVERMAN: Yes, your Honor.

(Pause.)

A It obviously says here that I remembered Tri-County.

Q I am not asking you what it says there.

I ask you if that refreshes your recollection as to a firm by the name of Tri-County.

A Not really. I think now when I say Tri-County, I think of asphalt, I don't know why, or an asphalt firm, but it doesn't really refresh my memory, no. I mean I realize what you are saying there. I said it then. But the name now doesn't mean anything to me.

Q Did you read the full page, sir?

A No, I did not.

Q Would you please read this full page and see if it refreshes your recollection as to when Taff Trucking

was working for Paterno & Sons, Inc.?

(Pause.)

A I don't know.

Q Does it refresh your recollection, sir, as to when Taff Trucking was working for Paterno & Sons, Inc.?

A Yes, my first recollection actually is, I tie it into Johnson Avenue somewhere. I don't know what year that was, probably 1967 or 1968.

Q Mr. O'Reilly, did Taff Trucking work as a trucker on the Watson Avenue job?

A I don't remember.

Q Were you the super there?

A Yes, I was.

Q You don't remember whether or not Taff Trucking worked on that particular location?

A He might have, but I don't remember.

Q What was the span in terms of time that the Watson Avenue job was under construction?

A I think about a year or so.

Q And during what year or years did that time span?

A Well, it was before Johnson Avenue. I would guess in the area of 1967.

Q When did the job begin, sir, do you recall?

A I don't recall.

Q And was hte Watson Avenue job before the Johnson Avenue job?

A Yes.

Q When did the Johnson Avenue job begin, sir?

A I think right after the Watson Avenue job, which would make it about 1968.

Q And when did that job end, sir?

A Some time in 1969 I think.

Q Do you know if Taff Trucking worked on the Cedar - hurst job, sir?

A I don't know. I wasn't there.

Q Do you have any knowledge as to whether or not he worked on that particular job?

A No, I do not.

Q Do you know an individual by the name of LaSpina, sir?

A Yes.

Q What business is he in?

A Trucking business.

Q Did he work for Paterno & Sons, Inc.?

A Yes.

Q And what jobs do you recall him working at, sir?

A Watson Avenue, Johnson Avenue, some job before that, I am not sure what.

Q Did he work at Carmel?

A I don't really remember.

Q What is your best recollection, sir?

A I don't know.

Q Is Carmel in the same local; in other words, the same jurisdiction as the Rockaway jobs?

A No, I don't think so.

Q Did he work on the Cedarhurst job, do you know?

A I don't know. That's the one you just asked me about, Peninsula Boulevard in Cedarhurst, they are the same job.

Q Did you ever hire any trucks through Mr. LaSpina?

A I think he only owned one truck, I am not sure.

Q Did you ever ask Mr. LaSpina to get more trucks than he actually owned?

A Yes.

Q And on what job was that, sir?

A Well, I think specifically on Watson Avenue he pretty much took care of all of our --

As a matter of fact,he stopped driving his own truck and put a chauffeur on his own truck and he sort of dispersed the trucks around the job and things like that; he got a day's pay, I believe, but he took care of getting the trucks a lot of times.

Q Does it refresh your recollection, sir, as to who Mr. LaSpina hired?

A There's a lot, you know --

Q Do you recall whether or not Mr. LaSpina hired Mr. Minichino?

A I don't know.

Q Now, sir, do you recognize the name of a trucker by the name of Michael Catenzaro?

A No, I do not.

MR. BRILL: Same objection. Excuse me, please. Same objection, your Honor, to this line as I have previously made.

THE COURT: Same ruling. Overruled.

A No.

Q You don't recognize the name?

A I don't recognize the name.

Q Did anyone by that name work at a job where you were the super for Paterno & Sons, Inc.?

A Could he have?

Q I didn't ask you "could" yet. Did he?

A I don't know. He could have, I don't know.

Q Do you know any trucking company by the name of Michael Catenzao?

A I don't recall the name.

Q Did you ever call a Michael Catenzaro to rent trucks?

A I might have, I don't know.

THE COURT: He didn't ask you what you might have. Mr. O'Relly, just answer the questions.

THE WITNESS: I'm sorry, I thought I was answering.

THE COURT: No, he asked you, did you.

Q Did you ever call a Michael Catenzaro to rent dump trucks?

A I don't know.

Q What is your best recollection, sir?

A I don't have any.

THE COURT: Let me ask you this, do you have any recollection of calling a trucker by that name?

THE WITNESS: No, I do not.

Q Do you recognize the name Thomas Tuccella?

A No, I do not.

Q Did anyone by the name of Thomas Tuccella, to your knowledge -

THE COURT: Now, Mr. Silverman, if he doesn't recognize the name, isn't the answer to your question implied in that?

MR. SILVERMAN: I will just ask him one final question, as to each one of the names, your Honor.

THE COURT: All right.

Q What is your best recollection, Mr. O'Reilly, as to whether or not you ever called someone by the name of Thomas Tuccella to rent trucks?

A I might not have called him directly, but--

Q I am asking you, sir, what is your best recollection --

THE COURT: If you phrase the question more accurately, you may get a less vague answer.

Q Did you ever call a Thomas Tuccella to order trucks, dump trucks?

A You are asking me something I feel I can't answer, I don't know whether I ever called him.

Q What is your best recollection, sir?

A I don't know. I might have called him-- you know, it is a name that I just don't know if --

Q You don't recognize the name, is that correct?

A I don't remember the name.

Q Do you ever recall writing the name Michael Catenzaro or Thomas Tuccella on a job sheet, your daily sheet?

A No, I don't recall writing the names.

Q Do you recognize the name Anthony Ferrotta?

A No.

Q Do you recall writing the name of Anthony Ferrotta on any job sheet or cost sheet?

A No, I don't recall it.

Q Do you recognize the name John Aurrichio?

A Yes.

Q And how is that name familiar to you, sir?

A I just know the name. He had equipment that he used to rent, and trucks, I suppose.

Q Do you recall at which job site Mr. Aurrichio, or John Aurrichio, rented equipment or trucks to Paterno & Sons, Inc.?

A I don't know.

Q Mr. O'Reilly, did you appear before the grand jury on this matter?

A Yes.

Q You were asked questions and you gave answers in response to the subject matter we are discussing?

A Right.

Q Mr. O'Reilly, could you please read to yourself page 46?

A Yes.

Q Would you please read that to yourself, sir?

A Yes.

(Pause.)

Q Did you have an opportunity to read that, sir?

A Yes.

Q What is your recollection -- has your recollection been refreshed, sir, as to which particular job John Aurrichio worked for Paterno & Sons, Inc.?

A I'd say I didn't know what particular job for Paterno & Sons. In here it says I recognize the name Aurrichio from the World's Fair, which I still do.

Q You recognize the name John Aurrichio from working for Paterno & Sons, Inc. at the World's Fair?

A No, he didn't work for Paterno & Sons, Inc. at the World's Fair.

Q But you recognize the name from being at the World's Fair?

A Yes.

Q Did you work in the construction industry at the World's Fair?

A Yes, I did.

Q Do you recognize the name John Aurrichio from any of the job sites other than your working at the World's Fair?

A No.

Q Mr. O'Reilly,do you recognize the name Arthur Lazravitch?

A I do now, but at the time of my grand jury testimony, I did not.

Q How do you recognize the name now, sir?

A Because on the Webster Avenue job, which is just a recent job, I ordered some trucks through Taff, and Taff inturn-- maybe I ordered eight trucks -- Taff maybe sent me one of his and seven of someone else's and one of them was Lazravitch or whatever the name is.

Q Was it Lazrovitch with an "o"?

A Lazrovitch.

Q Was his first name George?

A I don't know.

Q Do you know where his place of business was?

A I did copy it down and I did put it on a daily report that I sent in from Webster Avenue. As a normal daily report, I set it down.

Q When did the Webster Avenue job take place?

A It is in process now.

Q How long ago did you see this truck with the name Lazrovitch on it?

A Within the past six months or so.

Q Past six months?

A Yes.

Q Where is the job, Webster Avenue, where is that

located?

A In the Bronx.

Q And did you have a conversation with the driver of that truck at that time?

A I did not.

Q When did you first-- when did yourst hear the name Arthur Lazravitch?

A When I was with Mr. Ayres and Mr. Rizzo.

Q About two or three years ago?

A Something like that.

Q Mr. O'Reilly, to your knowledge -- withdrawn.

Mr. O'Reilly, did you maintain a list of truckers who performed work for Paterno & Sons, Inc.?

A No.

Q Excuse me, sir?

A No.

Q You never maintained a list of truckers who worked for Paterno & Sons, Inc.?

A Other than the list that I sent into the office.

Q A list that you maintained while you were superintendent during the years 1965 through 1970, of truckers who performed trucking services for Paterno & Sons, Inc.?

A No, I had no such list.

Q I would like you to turn to the testimony you have before you, to page 50, and ask you to read that page and ask you if that refreshes your recollection (handing).

A (After examining) Yes, I read that.

Q Does it refresh your recollection, sir?

A Well, it doesn't change my answer. I didn't have a list of truckers. You know, there's a thousand truckers.

Q I didn't ask you if it was a complete list. I asked you did you maintain any list --

A Oh, any list.

Q -- of truckers --

A Yes, I had truckers' numbers, yes.

Q During the period 1965 through 1970 what were the names of the truckers that you recall at the job sites where you worked that performed the trucking services for Paterno & Sons, Inc. -- the biggest ones in that group.

MR. BRILL: I am going to object to the latter part of that question, "the biggest ones in that group", your Honor.

THE COURT: Why are you confining it to the biggest ones, Mr.Silverman?

MR. SILVERMAN: I want Mr. O'Reilly's recollection as to the truckers who performed the most trucking services -- dump trucking services for Paterno & Sons, Inc. at the job sites that he worked on.

THE COURT: I think Mr. Brill is suggesting maybe you ought to let him give you any names.

MR. SILVERMAN: I will take those.

THE COURT: All right, give him any names of truckers that you remember -- just any names.

Q The names of truckers who worked.

A Mark Eugene; La Spina; Minichino; Taff -- even

though they are the same, they did have one truck that said "Minichino" and one the other-- Ted Murray.

Offhand right now that's about all I can think of.

Q And of the ones that you recall, sir, which ones performed the most trucking services?

A I couldn't answer that.

Q Excuse me?

A I don't think I can answer that. If I said anything I would say maybe -- I don't know.

Q You have no recollection as to whether any one of those four companies performed more work than any one of the other four?

A No. Whatever names came to my mind I gave you.

Q Sir, at the job sites where you worked, did you maintain a telephone directory or a daily diary of those particular jobs?

A Well, I had a daily diary which I kept really as a telephone directory.

Q And did you maintain one for each separate job or did you have one that covered all your jobs?

A When I was upstate I had a book, just specifically for that job. The book that I have had for four or five years I didn't even have with me upstate -- that was

at home. I don't know which book you would be referring to.

Q Do you still have the book that you used on the Rockaway job?

A No.

Q Do you know what happened to that book?

A I don't even know that I used that book. It seems to me we used -- a lot of the suppliers give you a big card and the telephone numbers are put on that. There are not that many numbers on a small job. I don't know that I had a book on the Rockaway job -- I don't recall that I did.

Q Do you recall that you had a book on the Johnson-Morgan job?

A The book that I finally started and started keeping numbers in, I believe started in 1969 -- that would be maybe after Johnson Avenue.

Q Do you recall if you had a book on the Watson Avenue job?

A No. That again would probably be a field card. It might have been a small book -- I don't know, but my major book I think I started in Riker's Island or the end of Johnson, something like that.

Q And the books that you say you maintained, they

had the telephone numbers of the people who were doing work for Paterno & Sons at that particular job?

A They had a lot of the numbers, yes.

Q I show you Government's Exhibit 144 and ask you if you recognize that book (handing).

A Yes, I do.

Q What is that book, sir?

A This is a book that was up at the New Windsor job.

Q Is that known as an upstate job?

A Yes, it was.

Q Is New Windsor around Newburgh, New York?

A Yes.

Q And when did you start using this book, do you recall?

A When I wentup to New Windsor.

Q When would that be, sir?

A About two years ago, I guess -- well, let's see -- well, no, let me think about it a minute. I came to New Windsor -- I would say 1972.

Q 1972, sir?

A Yes.

Q Do you recall giving --

A It could be the end of 1971 -- it could be the

end of November 1971 -- I went up there in 1971, so it might have been in November 1971.

Q And do you recall giving that book to anyone when you appeared before the grand jury? Did the foreman direct you to bring it in?

A Yes.

Q And did you present the book at that time?

A After I found it, yes.

Q And was that at your appearance before the grand jury?

A Yes, it was.

Q Would that be at the end of 1972?

A Whenever I did -- I think it was the end of 1972, something like that, yes.

Q So your testimony is that you used this book for only a one-year period?

A Maybe I used this book for a one-year period, maybe a little less.

Q What is your testimony, sir? How long did you use it?

A Whatever time I was in New Windsor, which I think was less than a year. I believe I was there nine months, and this is the book that was in New Windsor.

Q Did you enter into that book the names of any

trucker that worked for Paterno & Sons, Inc.?

A Yes, I believe so.

Q Sir, I would like you to look through that book and tell the jury whether or not in that book appeared the names of John Aurrichio, Michael Catenzaro, Anthony Ferrotta, Thomas Tuccella and Arthur Lazravitch?

A No, I can tell you without looking that they are not in this book.

Q I show you Government's Exhibit 145 and ask you recognize that book, sir (handing)?

A Yes, I do.

Q Did you also produce this book when you appeared before the grand jury at the same time that you produced the other book?

A Yes.

Q And what is Government's Exhibit 145?

A It's a -- well, it reads "National Diary for 1969", but it was used mostly as a telephone directory. It was used for some information on additional work. It was used to list the names of the people who were on the job, because this was on Riker's Island and they had to have badge numbers and so forth, so we had a name with a corresponding badge number.

Q Was that book prepared by you, sir?

A Most of it. Some of it was done by Bob Zindler who was on the job with me.

Q I would like you to open the book and turn to the date, January 2 and just tell me if there is writing on that page?

A (After examining) Yes.

Q Is that writing in your handwriting, sir?

A No.

Q Do you recognize whose handwriting that page is in?

A I don't recognize the handwriting as such, but I think it is Bob Zindler's.

Q Would you thumb through the book, sir, until you come to the first page in it that has your handwriting on it?

A (After examining) Friday, January 31st.

Q And that is in your handwriting, sir?

A Yes.

Q I would like you to turn to the front of the book, sir.

(The witness complies.)

Q In the front of that book are there telephone numbers listed?

A Yes.

Q Are they in your handwriting, along with other individuals?

A (After examining) Most of them are. Some of them aren't.

MR. SILVERMAN: At this time, your Honor, the government would like to offer in evidence --

A There's a lot of them here.

MR.SILVERMAN: -- 144 and 145 (handing).

MR. BRILL: May I ask a couple of preliminary questions, your Honor?

THE COURT: Which go to admissibility?

MR. BRILL: Yes.

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. BRILL:

Q Mr. O'Reilly, is Government's Exhibit 145 the book which was kept for the Riker's Island job (handing)?

A Well, it was started in Riker's Island. Whether it went any further or not I don't know.

Q When had the Riker's Island job started?

A In 1969.

Q Did it reflect any of the other jobs about which you have been asked questions?

A No, it did not.

Q Can you tell us --

A I think this is all Riker's Island.

Q All Riker's Island?

A Yes.

Q Can you tell us when Exhibit 144 was started? This was the one you described as the upstate job at New Windsor?

A Well, I went upstate in November of 1971. This book was there -- would have been there for all of 1971. The job was stopped for a while. It would have been there all of 1970.

I would think that the New Windsor job started somewhere in '69.

MR. BRILL: I object to them, your Honor. They are not relevant or material to the issues in this case.

MR. SILVERMAN: Would you like to be heard from the government?

THE COURT: Why do you claim they are relevant?

MR.SILVERMAN: They are relevant to show whether there were any numbers of any of these people in Mr. O'Reilly's diary who was responsible for calling truckers.

THE COURT: Objection overruled.

(Government's Exhibits 144 and 145 were received in evidence.)

BY MR. SILVERMAN:

Q Mr. O'Reilly, I would like you to open Government's Exhibit 145, to the beginning of the book that has the telephone numbers.

(Witness complies.)

Q I would like you to look under the section that has the letter S and the letter T.

A Yes.

Q Are there any numbers in there or names in there for Taff or Minichino?

A (After examining) Yes, Taff, Taff -- yes, Taff's name is in here.

Q Would you look kindly,s ir under the M's,and I ask you whether there are any numbers there under "Minichino"?

A (After examining) No -- oh, unless they go further -- wait just a minute.

(After further examining) I don't see any.

Oh, I am sorry, you are right.

THE COURT: Mr. Silverman, I have received the exhibit, but if you think there are certain things in there let us not waste time by having him look them up.

MR.SILVERMAN: Yes.

BY MR. SILVERMAN:

Q Mr. O'Reilly, without looking through the book do you know whether there are any numbers in there for the five truckers' names that I have mentioned?

MR. BRILL: That is objected to, if your Honor pleases. This book relates to Riker's Island, and there is no suggestion that any of those five names were employed or had any connection with the Riker's Island job.

THE COURT: The objection is overruled.

MR. BRILL: I respectfully except.

A Would you repeat the question?

Q Without looking through the book, do you know of your own personal knowledge as to whether or not there were any names in there under the five names that I have mentioned -- Aurrichio, Lazravitch --

A No.

Q -- Ferrotta, Tuccella and Catenzaro?

A No, but I did not use those trucks at this time.

THE COURT: He is just asking you what he just asked you, and your answer is you know without looking?

THE WITNESS: Yes, without looking because I used Taff over there.

Q Answer me, sir, when you say you did not use those

truckers at that time, what do you mean by that?

A Riker's Island.

Q So, in other words, those names do sound familiar to you?

A No.

Q Or is it that they don't sound familiar to you?

A Maybe all I was trying to say -- maybe I shouldn't --

THE COURT: Maybe you should answer the question.

THE WITNESS: Okay, go ahead.

(Question read by the reporter.)

MR. BRILL: Is that in connection with the Riker's Island job, your Honor?

THE COURT: Please, Mr. Brill.

Are they familiar to you in any connection?

THE WITNESS: No, the name isn't.

THE COURT: That is all you were asked.

THE WITNESS: Yes, sir, right.

Q Mr. O'Reilly, I would like to show you Government's Exhibit 181 and ask you if you recognize this check, sir (handing).

A Yes.

Q How do you recognize it, sir?

A It's my payroll check and it's my pay, in fact.

Q Your pay?

A The check made out to me for my pay.

Q Will you turn the check over to the reverse side of the check, the back of the check.

(Witness examines.)

Q Do you recognize any of the handwriting on the back of the check?

A (After examining) Well, the back of the check has got the names James O'Reilly and George Denti on it.

Q I didn't ask you that.

THE COURT: The question is, do you recognize --

A It looks like my signature. I can't attest to the other signature.

Q So far as the first name that appears as the endorsement, is that your zignature?

A Yes.

Q And do you recall the circumstances around the cashing of this check, sir?

A No.

Q Did you on any occasion give your check to someone who worked for Paterno & Sons, Inc. to cash your check?

A Yes, many times --lots of times I requested that my pay come out in cash, so someone in the office would sign my check with my permission and my pay would then

come out in cash. I would ask George or one of the girls that I want my pay in cash today.

Q Mr. O'Reilly, the name that appears underneath your name on the check, does that say "George Denti"?

A Yes.

Q Do you recall ever giving your check to Mr. Denti in order to cash?

A He might have cashed a check for me. You ask me if I recall but --

Q Do you recall any occasions --

A Yes, on some occasions -- I don't say this check, but he has cashed a check for me out of his pocket and cashed the check at the bank, when I didn't get to the bank.

Q Mr. O'Reilly, I show you Government's Exhibit 33 and ask you if your handwriting appears anywhere on this check (handing).

A No, it does not.

Q No?

A No.

Q Did you cash Government's Exhibit 33?

A No.

Q Did you cash Government's Exhibit 181?

A Did I what?

(Question read.)

THE WITNESS: Give me that again.

(Question re-read by the reporter.)

Q In other words, did you take this check, go to abank and present it to someone at the bank and obtain cash for this check?

A I don't -- I don't know. It doesn't look like it. I don't think so.

Q Was there any occasion where Mr. Denti signed your check and then you thereafter took that check to a bank to be cashed?

A There were many occasions when he signed my check for me and cashed it for me and sent the money out to me on the job -- many occasions.

Q On those occasions did you sign the check?

A No, I did not.

Q By looking at the check, at the back of the check did you sign that check?

A (After examining) It looks like I did -- it looks like my handwriting, yes.

Q Now, sir, at any occasion where you signed your check, in other words, endorsed it, did you then have Mr. Denti endorse your check and then take the check to the bank to be cashed?

A Yes.

Q How did it come about that you had Mr. Denti sign after you signed, before you cashed it?

A Because if I was in the office, which I am rarely in the office, and if I was in the office and it was payday, he would take my check over to the bank and cash it. I would sign it and then when he cashed it he would have to sign his name.

Q That is not my question, sir. My question is on any occasion where you signed your check and Mr. Denti signed your check did you then thereafter take the check to the bank yourself to cash?

A Yes.

Q How did it come about that you had Mr. Denti sign your check after you signed it?

A Because the bank was across the street from the office. They don't know me. Now I would have my check -- I would sign my check. George would then have to sign underneath, or maybe I had two or three other checks with me I would have to sign all the other checks underneath, and then they would give me cash in the bank.

Q When you referred to the "bank across the street," which office are you referring to?

A City Island.

Q And did that ever happen with respect to the Rowe Street office?

A I don't really recall that, no.

Q But your recollection is of this happening at the City Island office?

A Yes, where I would sign, Mr. Denti would sign and I would sign again.

Q And then you would take it across the street?

A Yes, almost every week I would get my thing in cash.

Q What was the name of the bank -- what type of bank was the bank across the street from the City Island office?

A I don't know -- just a bank.

MR. BRILL: I cannot hear that.

(Answer read.)

Q Was it the Royal National Bank?

A No.

Q You don't think so?

A No.

Q Mr. O'Reilly, will you please look at the stamp mark on the front of the check and read the initials.

THE COURT: You are referring to Exhibit 181?

MR. SILVERMAN: Yes, your Honor.

A (After examining) It says"BRNB".

Q And underneath that, sir?

A Bronx -- "BX 149th Street".

Q Is 149th Street across the street from the City Island office?

A No.

Q About how far is it from the City Island office, sir?

A 149th Street in the Bronx to City Island?

Q Yes.

A 20 minutes away or something.

Q Is that walking or by car?

A By car.

Q All right. Now let us get the question again, Mr. O'Reilly. In reference to a check that you signed and when Mr. Denti's signature appeared on that check did you then thereafter take the check to the Royal National Bank to be cashed?

A I don't remember doing so, no.

Q Mr. O'Reilly, I would like to have you look at Government's Exhibits 124, 125, 142 --

A 142?

Q -- and 143. Will you do that, sir?

A (After examining) Yes.

MR. BRILL: Could it be indicated as being marked

for identification, your Honor? I am confused. I don't think they are in evidence.

THE COURT: All right. I think Mr. Silverman had just told you they are not in evidence.

MR. BRILL: That is the reason I asked it.

THE COURT: Well, the prior record will show that they are not in evidence.

MR. SILVERMAN: Let the record indicate that 124 and 125 are two single sheets of paper, and 142 and 143 are multiple sheets of paper.

BY MR. SILVERMAN:

Q Do you recognize what those exhibits are, sir?

A Yes.

Q And are they in your handwriting, sir?

A The ones I am looking at right here are, yes.

Q Will you please look through all of them, sir, and see whether or not they are in your handwriting?

A (After examining) In 142 they are all my handwriting, with the exception of one sheet that somebody else put something in on, other than me.

Q On that sheet is there handwriting on that one sheet that you refer to in your handwriting?

A Yes.

Q Okay.

A Except for one part of it.

Q Okay, but on that particular page there is handwriting that is yours?

A Oh, yes.

Q Have you also had an opportunity to examine 143?

(Witness examines.)

THE COURT: All right, he looked at them, Mr. Silverman.

Q Are they all in your handwriting?

A Yes.

Q What type of documents are they, sir?

A These are superintendent's daily reports that went to the city -- to the city inspector on the job.

Q And what particular job do they refer to?

A These are Johnson Avenue.

Q And did you sign these reports, sir?

A Yes.

Q What information is contained on these reports?

A A general description of the work that was performed for the day. In other words, it is a list showing laborers, timbermen, carpenters, trades people on the job -- the equipment on the job, and a very, very brief description of what was performed for that day.

Q And do you recall when you prepared these reports, sir?

A Probably daily or every day or two -- maybe I would get a day or two behind -- I don't know.

Q Generally your practice was to prepare them every day or every other day?

A Something like that.

Q And what did you do with these reports after you prepared them?

A I gave them to the city inspector.

MR. SILVERMAN: I would like to offer in evidence at this time Government's Exhibits 124, 125, 142 and 143 (handing).

(Mr. Brill examines.)

THE COURT: I think I will give the jury a 10-minute recess.

(Jury left the courtroom.)

THE COURT: Let us check on those exhibits and be ready to resume in ten minutes, Mr. Brill.

MR. BRILL: Very good, sir.

Judge, Mr. Silverman, subject to your Honor's approval graciously agreed, when this witness' direct examination is completed, that I can call a couple of witnesses out of turn -- one of whom will be out of town

next week and won't be available beyond today.

Another one is a public official who has to go back to work.

THE COURT: Yes, if that is agreeable I certainly would not object.

MR. BRILL: And he has agreed to that, subject to your Honor's approval.

THE COURT: Surely.

MR. BRILL: Thank you, sir.

(Short recess.)

t5 am me:mg 1 O'Reilly-direct 1200

(In open court, jury present.)

THE COURT: All right, is there objection to the exhibits?

MR. BRILL: None, your Honor.

THE COURT: All right, mark the exhibits in evidence, please.

xx (Government's Exhibits 124, 125, 142 and 143 received in evidence.)

BY MR. SILVERMAN:

Q Mr. O'Reilly, during the years 1965 through 1970, when you were a supervisor at a job site, working for Paterno & Sons, Inc., do you recall on any occasion working on a Saturday or Sunday?

A I recall on some occasions working on Saturday. Sunday I don't recall.

Q Do you recall any construction work being performed on Saturday?

A Yes.

Q Do you recall any--

A Specifically, no,though -- but I know I have worked quite a few Saturdays.

Q Do you recall any trucking work being performed on a Saturday?

A Specifically, no, but it could be.

me:mg 2 O'Reilly-direct

Q What is your best recollection, sir?

A It is a hard question.

Q You appeared before the grand jury on December 5th, 1972, is that correct, sir?

A I guess so.

Q Would you please look at page 35, sir?

I ask you to read that page to yourself, sir.

(Pause.)

Q Continue reading, sir.

(Pause.)

Q Continue reading on to page 36.

Did you have an opportunity to read those pages, sir?

A Yes.

Q Did you also read pages 36 and part of 37?

A Yes.

Q Is your recollection now refreshed, sir, as to whether or not you performed-- whether you worked on any Saturdays, sir?

A It is about the same as I said what is in here.

Q I am not asking you, sir, what is in there. I am asking you if your recollection has been refreshed as to whether or not you ever worked on a Saturday.

A I have worked on a Saturday. I have stated that.

Q Is your recollection now refreshed as to whether or not any trucker performed trucking services for Paterno & Sons, Inc. on a Saturday at a job site where you were a superintendent?

A I don't have a recollection either way, whether they did or they didn't.

Q What is your recollection, sir, as to whether or not any trucker performed any trucking services for Paterno & Sons, Inc. on a Sunday?

A I have no recollection of that.

Q Sir, do you recall on any occasion giving gasoline to truckers who performed trucking services for Paterno & Sons, Inc.?

A Well, gasoline or diesel, yes.

Q I am referring to the gasoline or diesel fuel.

A Yes.

Q Do you recall giving 300 gallons of diesel fuel or gasoline to any one trucker on a given day?

A A couple on the Carmel job we had tanks on the job and we supplied the trucks with fuel, whether we gave them 300, 200 or 100, I couldn't specifically say.

Q Sir, could you please refer to page 38 of the testimony that is before you, sir?

MR. BRILL: That is not inconsistent, your Honor.

me:mg 4 O'Reilly-direct

THE COURT: He is not reading anything and I don't know what you are standing up for.

He hasn't read any of this yet.

MR. BRILL: I have. I just read it.

THE COURT: Nobody said it is inconsistent.

Q Look at page 38, sir.

A No, that's about what I said.

Q My question is, sir, do you recall specifically giving 300 gallons of diesel fuel or gasoline to any individual trucker?

A Specifically no.

Q You have no recollection of that, sir?

A I have a recollection of giving fuel; I have no recollection of giving 300 gallons to any one trucker. No.

Q Do you recall the name of the trucker who you gave gasoline or diesel fuel to at the Carmel job?

A No.

Q Now, Mr. O'Reilly, when did you first find out or were you first aware of the fact-- withdrawn.

When were you first questioned about these five truckers?

A I think in Mr. Ayres' and Mr. Rizzo's office.

Q Is that approximately two or three years ago?

A About that, yes.

Q Now, since that time that you were first questioned about the names of these truckers, did you have any conersation with George Denti about the existence or non-existence of these truckers?

A No.

Q Did you have any conversation with the defendant Michael Paterno about the existence or non-existence of these truckers?

A No, he just said to tell the truth, whatever it is, and that's it.

Q Did you ever ask him whether or not these truckers existed?

A No --

MR. BRILL: He just said he had no conversation with either of them.

THE COURT: No, he said that and then he added something which sounded as though there was a conversation.

So I think counsel is allowed to press.

A No, I never did.

Q What was the nature-- what was said-- what did you say to Mr. Paterno and what did he say to you in reference to this matter when he told you to tell the truth? What else was said?

A That's all he said. He said, "Tell the truth

exactly as you remember. We have nothing to hide, so just tell the truth."

Q How did that conversation come about?

A Oh, because, you know, I wondered what all this was about, and he just said, "Answer their questions and tell the truth."

THE COURT: Now look, Mr. O'Reilly, you were asked if you had any conversation. I take it the answer to that question is yes, not no?

THE WITNESS: Yes.

THE COURT: And now counsel is asking you what the conversation was and you are to tell him the substance of it, to the best of your ability, and not just a single remark that you say was made.

Do you understand?

THE WITNESS: Oh, okay.

I guess the conversation we might have had would be, you know--

THE COURT: Not what you might have had.

THE WITNESS: Or did have.

THE COURT: To the best you can remember what you did have.

THE WITNESS: To the best of my recollection the conversation we did have, was,"Mike, what's this all about?"

He said, "Don't worry about it, we have nothing to hide." He says, "Whatever questions they ask you, just answer truthfully and to the best of your memory."

That's all.

Q Did the names of any of the five truckers come up in that conversation?

A No.

Q Did the fact that there were five truckers come up in that conversation?

A The only thing that come up in there was he might have said to me, "There are some trucks we said we had and they are saying we didn't have," but he didn't give no names or go into specifics with me at all.

Q But he did say, "They are questioning some trucks we claim we did have and they say we didn't have"?

MR. BRILL: That's a paraphrase.

THE COURT: Is that the substance of what he said?

THE WITNESS: I would think that's the substance, yes.

Q In other words, he did say that there were trucks that the government claimed did not work for Paterno & Sons Inc. and tht he claimed had worked for Paterno & Sons, Inc.?

MR. BRILL: That is a paraphrase, your Honor.

THE COURT: It is a question. Objection is overruled.

In the light of what I have observed about the testimony, that degree of leading is perfectly permissible and I will allow it.

THE WITNESS: Would you just repeat it again, sir?

Q Didn't Mr. Paterno tell you that the government is claiming that certain truckers did not work for Paterno & Sons, Inc. but he told you that they did work for Paterno & Sons, Inc.?

A Well, answering in my own words--

Q Is that in substance what he said to you?

A Yes, that's the substance.

MR. BRILL: Can he answer his own way?

THE COURT: No, no, he has now answered. That's the substance.

Now if you wish to put it in your own words this conversation that you could not at first recall, you may give it and give all that you remember.

A Well, it is just what I said is what I remember.

THE COURT: Put it in your own words.

THE WITNESS: He didn't say the government, he said, "they are saying," you know, when I asked him, you know, "What's it all about, Mike," and he said, "Well, they're saying, they are mixed up on the trucks and they are saying we didn't have certain trucks and stuff like that."

That's about the whole bit of it.

Q How many times did this conversation take place during the last two or three years?

A I don't know, maybe three or four times, but the same conversation.

Q Was there anything additional in any of the other coversations, other than what you have just told us happened in this one conversation?

A No, I don't think so.

Q Did Mr. Paterno ever tell you whether or not the firm had hired private detectives to locate these five truckers?

A No.

Q Did you ever ask him whether he hired private detectives to find these five truckers?

A No.

Q Now, did you have any conversations with Mr. Denti concerning this topic?

A I would say about the same conversation as I had with Mr. Paterno.

Q How many times?

A About the same number, three or four times.

Q And what did you say to Mr. Denti and what did Mr. Denti say to you in the conversations that you had with

him about this topic?

A They didn't really discuss it that much with me.

Q I am not asking "they"; I am asking what Mr. Denti said to you, what you said to Mr. Denti.

A I didn't really say anything. About the same thing, "What is it about?" And "It is about the truckers, they are saying they were not there," and that's about it, and "answer their questions, and just tell the truth and remember what you can remember."

Q How did it come about, sir, that you had the conversation -- withdrawn.

Did you have a conversation with Mr. Denti after you had the conversation with Mr. Paterno or before you had the conversation with Mr. --

A I don't know.

Q Excuse me?

A I don't know.

Q How did it come about you had a conversation with Mr. Denti after you already knew whether or not these truckers existed or didn't exist?

MR. BRILL: That's not what he said. He is now fixing the time by his question.

THE COURT: Objection is sustained.

MR. BRILL: Thank you, sir.

Q Do you recall, sir, having a conversation with Mr. Paterno about this subject?

A Yes.

Q Did you at any time either prior to or subsequent thereto have one conversation, at least one conversation, with Mr. Denti?

MR. ROSENTHAL: I submit that there's two questions there, prior to or subsequent thereto.

THE COURT: Yes, I don't think that's a useful question.

He has said he had a conversation with Mr. Denti.

Q Now, I am referring to after you had at least one conversation with the defendant Michael Paterno, and at least one conversation with the defendant George Denti, how did it come about, sir, that you had subsequent conversations with the defendant George Denti?

A It is a topic, and you just talk about it, you know.

Q And in each one of these conversations, sir, are you testifying that all that was said was that-- was the testimony that you have previously given?

A Yes, sir.

Q There was nothing in addition to that?

A No, nothing.

Q Now, the conversations that you had with Mr. Denti, what did you specifically say to him and what did he specifically say to you in reference to the existence or non-existence of these truckers?

A Can I say one thing?

Q Whatever you want, sir.

A The conversation might have been at the same time. I am not really sure, you know; in other words, the three of us might have been talking at the same time. I am not sure that I had a special one here and a special one there.

THE COURT: I am going to give the jury a five-minute recess.

Take five minutes, not more.

(Jury left the courtroom.)

THE COURT: Mr. O'Reilly, from the actions of Mr. Silverman and the other lawyers, you are aware that you are being questioned about a portion of this case which may be of special consequence?

THE WITNESS: Yes, sir.

THE COURT: You and I are aware that you have a grant of immunity.

THE WITNESS: Yes, sir.

THE COURT: I now instruct you to use the rest of

this five minutes to think very carefully about the subject on which counsel is questioning you on which you initially gave an absolutely incorrect answer.

You said you had had no conversations with Mr. Denti and then you remembered that you did have some.

THE WITNESS: I didn't realize it.

THE COURT: Now listen to me, and you are talking about various things that might have been.

Now I want you to use these couple of minutes to focus your mind on those events which are important in this case, and when you are asked,when the jury returns, you give your best detailed recollection of any conversations and think whether they were together or separate and how many and what was said and not simply that you were told to tell the truth, which you keep telling us and which we believe.

THE COURT: Yes, sir.

THE COURT: Remember everything else that was said.

Three or four minutes, gentlemen.

(Recess.)

THE COURT: Are you ready, Mr. Silverman?

MR. SILVERMAN: Yes, your Honor.

THE COURT: I want to say while the jury is

absent, it strikes me for the guidance of all of us that members of the jury might have been caused to wonder, as the judge might have been caused to wonder, why two people with whom Mr. O'Reilly worked for so many years made a particular point of telling him to tell the truth and why that seems to be at the moment the only thing that sticks in his mind concerning a conversation or conversations about matters involved in his work, and I thought I ought to have him focus on this so we can see whether other things come back to him about that.

All right. Let's proceed.

(Jury present.)

THE COURT: All right, Mr. Silverman.

BY MR. SILVERMAN:

Q Mr. O'Hara, did you ever have a conversation with the defendant George Denti in relation to the existence or non-existence of these truckers?

A Yes.

Q Would you please tell the ladies and gentlemen of the jury what you said to him and what he said to you?

A Well, I asked what it was all about, and they said that it was about --

Q I am not asking "they," just what Mr. Denti said.

A Mr. Denti said that it was about truckers who they are saying were not there, and this is after I came from Mr. Ayres and Mr. Rizzo's office, and I said that, "Well, they said that they were non-existing people."

Q Who is "they," sir?

A Well, Mr. Ayres and Mr. Rizzo.

Mr. Denti said,"They are existing people."

I said, "I don't remember any of those names."

He said, "But they are truckers and they are existing people." And all that.

Q Did you tell him during that conversation, sir, that you didn't recall any of those five men?

A Yes, I did.

MR. SILVERMAN: I have no further questions, your Honor.

THE COURT: Was it now, Mr. Brill, that you wanted to --

MR. BRILL: Yes, your Honor.

THE COURT: Sometimes, ladies and gentlemen, for the convenience of witnesses, we interrupt one witness and postpone part of his examination to put on some other, and we are going to do that now, as I understand.

So we will just excuse you for the time being, Mr. O'Reilly, and you will be cross-examined later on.

MR. BRILL: Thank you.

May I just go out land bring them-- well, I will bring in one at a time. There are only three very short ones.

THE COURT: Is this in the nature of character evidence?

MR.BRILL: Yes, sir.

THE COURT: Do you want them to wait out in the hall or can they--

MR. SILVERMAN: No, your Honor.

THE COURT: They can all come in.

...

B R O T H E R A M A N D U S L E O C A L L,

called as a witness by defendant Paterno, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BRILL:

Q Are you addressed as Brother Leo?

A Yes, sir.

Q Brother Leo, do you know -- withdraw that.

What is your profession or occupation, sir?

A I am the retired Dean of Engineering of the School of Engineering at Manhattan College.

Q How long were you the dean of the School of

Engineering?

A 31 years.

Q And when were you retired from that business?

A I retired from being dean in 1961 and I went back teaching in the School of Business and retired completely in 1970.

Q During the time when you were the Dean of Engineering at Manhattan College, did you come to know Michael Paterno?

A Yes, sir.

Q Was he one of your students there at the time?

A Yes, sir.

Q Hvae you at my request checked your records as to when you first came to know Michael Paterno?

A Well, Michael came to the-- Mr. Paterno came to the college and then he was called out during the war and then returned and graduated in 1948.

Q And have you been in touch with him since that time?

A Well, on and off, meeting him at various engineering meetings and other places.

Q Do you know others who know Michael Paterno?

A Other people who know Michael?

Q Yes.

A Yes, sir.

Q And do you know from what other people say about him the reputation of Michael Paterno for honesty, integrity and compliance with law?

A We never had a question. The brothers and the laymen on our faculty also know Michael or Mr. Paterno as a very fine gentleman.

Q And his reputation is what, sir?

A Excellent.

Q By the way, Brother, have you heard of this case in which you are now called as a character witness?

A I don't know what it's all about except I heard it was a tax case, that's all. I don't know anything about it, no, sir.

Q Have you since you first heard of it talked with others who also have heard of it and know Michael?

A No, sir.

MR. SILVERMAN: Objection to that, your Honor.

No questions, your Honor.

THE COURT: Thank you for coming.

(Witness excused.)

...

c a r l v e r g a r i, called as a witness by defendant Paterno, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BRILL:

Q Mr. Vergari, are you an attorney-at-law duly admitted to practice in the State of New York?

A Yes, sir, I was admitted to practice in 1948.

Q Do you know Michael Paterno?

A I do.

Q How long have you known him?

A As long as I can remember.

Q Are you related to him?

A We are. We are first cousins. His mother and my mother are sisters.

Q Do you know others who know him?

A Many people.

Q Now, have you ever held public office, Mr. Vergari?

A I hold public office now.

Q And prior to your present public office, have you held other public office?

A Well, I have been in public office since my graduation of law school in 1948. I was an Assistant DA in New York County for some ten years, for the better part

of ten years; I was chief counsel to the New York State Commission of Investigation, and since 1968 I have been the District Attorney of Westchester County.

Q Is that an elected public office?

A It is.

Q And you were elected to that post?

A Twice.

Q Do you know other persons who know Michael Paterno?

A Yes, I do.

Q Have you had occasion to talk with such people about his reputation for honesty?

A Yes.

Q Integrity and compliance with law?

A Yes.

Q Wuld you tellus, please what is his reputation for honesty, integrity and compliance with law?

A Very, very good.

Q And have you heard about this case?

A Yes.

Q Have you since you heard of it talked with others about it, about Michael Paterno?

A I have.

MR. SILVERMAN: Objection, your Honor.

THE COURT: On what ground?

MR. SILVERMAN: He has already testified that he has spoken to other people about Mr. Paterno's reputation.

THE COURT: Overruled.

Q Mr. Vergari, will you tell us whether since you have heard of it and you have talked with others who have heard of it, what is Michael Paterno's reputation for honesty, integrity and compliance with law?

A Very, very good.

MR. BRILL: Thank you, sir.

MR. SILVERMAN: I have no questions, Mr. Vergari. Thank you for coming.

MR. BRILL: Thank you.

(Witness excused.)

...

G E O R G E M. K E R R, JR., called as a witness by defendant Paterno, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BRILL:

Q Mr. Kerr, what is your occupation and business?

A I am president of the Kerr Concrete Pipe Company, manufacturers of concrete pipe.

Q Do you know Michael Paterno?

A Yes, sir, for over 20 years.

Q Have you known him both in a business relationship and social relationship?

A Both.

Q Do you know others who are engaged in the same business, the contracting business, who know Michael Paterno?

A Yes, I do.

Q Hvae you yourself done business with Michael Paterno?

A For many years.

Q And with others in the same business?

A Yes, sir.

Q And do you also know others who know him socially?

A I do.

Q Have you, from talking with such people with whom you have done business and whom you have known socially, learned of Michael Paterno's reputation for honesty, integrity and compliance with law?

A Yes, I have. It is most excellent.

Q Can you tell us what it is, please?

A Most excellent.

Q Have youheard about this case?

A Yes, I have.

Q And since you first heard about this case, have you talked with others who have heard about this case?

A I have.

Q And have you, in the light of this case-- can you tell us what is Michael Paterno's reputation?

THE COURT: That phrasing gets pretty close.

I think I better advise the jury that the three people of whom Mr. Kerr is the third you have been hearing, are called character witnesses. Obviously, they are not going to give you any opinion on the guilt or innocence of any party on trial here.

I assume they don't have any, but if they did have, it would not be relevant, and I think the question as you put it is objectionable, Mr. Brill.

Do you have anything else?

MR. BRILL: Would your Honor be good enough to say in connection with what your Honor has said that this is evidence which may be taken into account by the jury?

THE COURT: I will say it when I charge the jury about all the evidence,but in light of your phraseology, which became a little more exuberant on the second go, I thought I ought to give the jury this perspective on what they are hearing.

Now, do you have anything else?

MR. BRILL: I would like to ask this one question as to what is his reputation since you have heard about this cae, for honesty, integrity and compliance with law.

A It hasn't changed, it is still of the best.

MR. BRILL: Thank you, sir.

CROSS-EXAMINATION

BY MR. SILVERMAN:

Q Mr.Kerr, how many people approximately have you discussed Mr. Paterno's reputation with?

A Three or four.

Q On how often a basis, sir?

A Casual basis.

Q I didn't ask you the circumstances. I said how often?

A I couldn't tell you, I really wouldn't know. You mean time-wise?

Q Weekly, daily?

A Some people I am involved with, several times a year, perhaps.

Q And how did it come about that you discussed his reputation on such a frequent basis?

A Mr. Paterno is a cousin of ours and quite often we talk about him as being a cousin and being a very good one and one who is quite honorable.

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MR. SILVERMAN: Thank you for coming, sir.

MR. BRILL: Thank you, sir.

I have no further questions.

(Witness excused.)

THE COURT: Are you ready to resume with Mr. O'Reilly?

MR. BRILL: Yes.

J A M E S O ' R E I L L Y, resumed.

CROSS EXAMINATION

BY MR. BRILL:

Q You were asked to look at the testimony which you gave on one of the occasions when you appeared before the grand jury, and specifically your attention was called, Mr. O'Reilly, to page 38 of the testimony you gave on December 5, 1972 -- on page 38.

A I don't have it yet, excuse me.

Q No, you don't have it.

A No.

Q Did that relate to the Carmel job?

MR. SILVERMAN: Objection, your Honor.

THE COURT: Sustained.

Q When you were asked questions about furnishing fuel, gasoline or whatever it was, was that in connection with the job that was done at Carmel, New York?

A My recollection of getting fuel was at Carmel.

Q And was that about 1965 and 1966 when that job was done?

A I believe so, yes.

Q And you were questioned in 1972 about that -- December 5, 1972, right?

A As far as the grand jury but I think -- I think it was '71 when I was in Mr. Ayres' office.

Q Some fiveor six years after the event occurred.

A Yes, sir.

Q Now, at that time was there anything that was specifically brought to your attention with respect to the furnishing of gasoline at that job in any particular or specific amount?

A I am sorry, I don't understand the question.

Q At the time when you were asked the question, whether it be before the grand jury or when Mr. Ayres and Mr. Rizzo asked you the questions, were you shown specifically something that referred to a particular amount of gasoline furnished for a particular trucker?

A I think there was a bill and it was marked on the bill that it was a back charge for fuel.

Q And did that refresh your recollection specifically with respect to the amount of the particular trucker or was it because of what you saw on the bill at the time?

A Well, it wouldn't refresh my memory specifically to a certain trucker or anything. I would remember anyway that we gave fuel there but not because I saw it on

the bill, but I wouldn't remember who I gave it to.

Q It was not uncommon, was it, to furnish gas to a trucker or to another equipment rental sub-contractor who needed it?

A No, it's not uncommon.

Q And you did charge for it on the job?

A If it was enough of an amount we did. If it was a small amount we didn't bother.

Q All right. Between 1965 and 1970 there were equipment rentals, were there not, from various companies as well as truck rentals? Isn't that so?

A You mean other equipment like cranes?

Q Yes.

A Yes.

Q Can you tell us if Duggan rented equipment and what kind of equipment was rented by Duggan?

A Mostly cranes.

Q Were there any dump trucks, excavation trucks?

A I don't believe he had any.

Q How about Durante?

A Durante I don't think had any cranes -- at least not to my knowledge. We got smaller equipment -- front end loaders, bulldozers, that kind of equipment -- maybe sometimes 1-man operated back hoe.

Q What about B&C Trucking, do you recall them?

A No.

Q Do you recall A. Cathcart?

A I got a recollection of a Cathcart, yes.

Q What kind of equipment do you recall was rented or obtained from Cathcart?

A Trucks.

Q You have already told us you remember Mark Eugene as a trucker.

A Yes, I remember Mark Eugene.

Q How about William Geis?

A There is a Geis Trucking that we used to use. He had flatbed type of trucks, sir.

Q Flatbed?

A When we moved, like steel plates and timbers and beams we used Geis Trucking at that time.

Q Not for the purpose of hauling or taking off earth or dirt excavating on the job?

A No, I don't think he had any dump trucks as such.

Q How about Gerosa?

A Gerosa we used mostly for moving heavy equipment from one job to another -- equipment that can't travel over the road has to be put on a trailer.

Q How about La Spina? I think you told us they are

one of the truckers ?

A LaSpina was a trucker, a dump trucker.

Q How about La Bosco?

A La Bosco, we have hired his crane, front-end loaders. He had a trailer to move equipment. I don't know whether he ever moved any of our equipment with his trailer but when he brought his equipment in he brought it in on his own trailer.

Q Do you recall Mack Trailer?

A Yes.

Q Did you rent excavation or dump trucks from Mack Trailer?

A No, just equipment-moving type of trucks.

Q How about L. Marino, do you remember that name?

A Marino had dump trucks.

Q Do you remember Orlando?

A I remember an Orlando who was a Watermain contractor.

Q Did you ever rent any dump trucks from Orlando?

A I think he had a boom truck, which is a truck that is all in one. In other words, it has the loading apparatus right on the truck and room for -- I think we used him mostly for steel plates, on his boom truck.

Q How about Sawmill Equipment or Trucking?

A Sawmill moves equipment, and we have used him.

Q And you did tell us that you recalled Taff Trucking?

A Yes.

Q You told us that you recall Sal Minichino?

A Yes.

Q Is Sal Minichino --

A Teddy Minichino as I know him.

Q -- is Taff Trucking?

A Teddy Minichino.

Q Or Teddy Minichino, is he Taff Trucking?

A Yes.

Q And has there, since some time -- I think you said in 1969 -- Taff Trucking been the sole trucking broker that you used to get trucks or truckers?

A Dump trucks.

Q Dump trucks?

A Yes.

Q Tell us, if you will, please, how you went about getting dump trucks or truckers?

A When?

Q Generally, first on any of the jobs that you testified that you were on.

A Well generally you would start a job and the truckers would normally show up before the job. They

would know the job -- they know it is going to break -- they see it laying out or they see you driving H-beams, preparing to start the job, and they will come around and ask you when you are going to start excavation, and you might tell them, "Well, next Wednesday" -- and that is the way it starts; or you may quote somebody you know and tell him, but generally they pretty much know every job.

Q And since the time that you began to use Taff Trucking exclusively as the broker, did you get trucks from Taff Trucking that were not Taff's trucks?

A Yes, many times.

Q When I say "from" I mean "from" or "through"?

A Yes.

Q Prior to that time did you get trucks or truckers -- dump trucks we are talking about or excavation trucks -- from whatever source that was available to you?

A Yes, wherever we could get them, and we got them from wherever we could. Maybe Minichino -- if we were with Minichino we might have had his trucks, too.

Q And did you get trucks or truckers through other truckers who worked on the job?

A They would bring their friends, yes.

Q Was that and is that a common experience in your business?

A Yes, not any longer -- but it was then.

Q Not now so far as Paterno & Sons is concerned because you are doing it all through Taff?

A Doing it all through one broker, yes.

Q But all of the truckers that you used are not necessarily for trucks?

A Yes.

Q. Although you always got them through him, right?

A But we ordered them all through Taff.

Q Right. That is your present practice.

A Yes.

Q That was not your practice between 1965 and 1970, was it?

A No.

Q Now the Riker's Island job about which you were questioned and concerning which you identified as Government's Exhibit 145 --

MR. BRILL: May I have it, please.

(Handed to Mr. Brill.)

Q -- is that solely Paterno & Sons' job (handing)?

A No.

Q Is it a joint venture job?

A Yes, it was a joint venture.

Q What is a joint venture in the contracting

business?

A A joint venture is where two contractors get together to perform one specific job.

Q And in this particular case, Riker's Island, which came around 1970 and 1971, I think you said --

A '69 it was.

Q -- that was a joint venture?

A That was a joint venture, yes.

Q And the other contractor was who, in that joint venture?

A Frank Mascali.

Q And is that job about to be finished now?

A Riker's Island?

Q Yes.

A Is finished.

Q It is finished?

A Yes.

Q Did you use on the job upstate, at New Windsor -- did you use truckers who came from the New York City area?

A No.

Q Did you get all the truckers locally?

A Yes.

Q And did you have any difficulty in getting enough

truckers for the job you wanted done?

A Sometimes.

Q And did you have to use some of the local truckers to get some others through them?

A Well, specifically not the driver but I might call a trucking firm up there and he really did not have any and he would help me out maybe by calling somebody else, and they would then send their trucks.

Q This book which you had of the New Windsor job, 144, it contains not only truckers but other kinds of people as well, doesn't it -- this directory?

A Yes.

Q And it was your personal book, was it?

A Well, the book was not started by me. It was my book when I went up to the job. The book was already there.

Tom Cohill, I suppose, had some numbers in there. I had; possibly my brother.

Q Your brother was also employed by --

A Paterno.

Q -- Paterno?

A Yes.

Q In what capacity?

A He was a construction superintendent. He did

plantwork. He did most of the plant work.

Q You were asked specifically about Watson Avenue, and you said that it took approximately a year before the Johnson Avenue job -- do you recall that?

A That is my best recollection of it, yes. I can't tie the years down but I can tie the order or the area of the jobs down, and I was on Watson Avenue, then I went to Johnson Avenue.

Q Was it the practice, to your knowledge, of Paterno & Sons to have progress photos made of jobs on which it was engaged?

A Yes, it was not only the practice but in some instances it is required.

Q To your knowledge was that done in respect of the Watson Avenue job?

A Yes.

Q Would examining such photos refresh your recollection as to the time when the Watson Avenue job was in progress?

A Yes, because the photos would have a date on the back and whoever witnessed the photos, his name is on it.

MR. BRILL: Could we have these marked as one exhibit for identification for the moment, your Honor.

(Photographs were marked Defendants' AQ for

identification.)

THE COURT: Mr. Brill, when you come to a breaking point we will stop.

MR. BRILL: I would like to do it right now, Judge.

THE COURT: Could you do that?

MR. BRILL: Yes.

THE COURT: Let us take our luncheon recess and come back at 2:15.

THE CLERK: The jury is excused for lunch until 2:15.

(Luncheon recess.)

AFTERNOON SESSION

2:15 p.m.

J A M E S O' R E I L L Y, resumed.

CROSS-EXAMINATION (continued)

BY MR. BRILL:

Q At the luncheon break, Mr. O'Reilly --

A I'm sorry, I didn't hear you.

Q At the luncheon break, we had just marked for identification AQ, consisting of a number of photographs which I now hand you and ask you to tell us if looking at them refreshes your recollection, first as to when the Watson Avenue job was started and done.

MR. SILVERMAN: Excuse me, your Honor.

In order to expedite matters, I'd be fully agreeable if Mr. Brill showed him the first picture and the last picture, if that would refresh his recollection.

MR. BRILL: I plan to offer them in evidence. I was going to ask him another question in order to make an appropriate foundation.

Q Does looking at those pictures indicate to you that they are a fair representation of the work done on Watson Avenue?

A Yes.

MR. BRILL: I offer them in evidence, AQ.

MR. SILVERMAN: May I ask him one or two questions, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. SILVERMAN:

Q Mr. O'Reilly, did you take these pictures, sir?

A I didn't take them myself. I was probably present when they were taken.

Q But did you take these pictures?

A Me? No.

Q Did you see these pictures before?

A Probably did.

Q Did you or didn't you?

A I would have to say yes.

Q When did you see them?

A During the course of the job or shortly after they were taken.

Q Are there any markings on these pictures that you would be able to look at and tell whether you saw these pictures before? Is there writing anywhere on those pictures?

A No.

Q On any of them?

A No. If you want to, I will look through all

of them. The few I looked at, no.

MR. SILVERMAN: A proper foundation has not been laid as to their authenticity.

THE COURT: He said they are fair representations of the area.

Is that what you said, Mr. O'Reilly?

A Yes, it is definitely the job that I did, if that's the question.

MR. SILVERMAN: Your Honor, the relevance of these pictures were to refresh his recollection, not as to whether or not-- there is no issue as to what the site looked like.

THE COURT: Are you objecting on the ground it is irrelevant?

MR. SILVERMAN: Yes, your Honor.

THE COURT: That has nothing to do with the foundation.

Why are these pictures relevant, Mr. Brill?

MR. BRILL: Because I want to show what the nature of the job was, your Honor, the nature of the excavation and eventually, through another witness, to show what was removed from it and what was brought back in order to complete it.

THE COURT: They are excluded.

MR. BRILL: Respectfully except.

May I ask some further questions with respect to them?

THE COURT: In an effort to show they are relevant?

MR. BRILL: No, I am going to ask some questions to establish the nature of the work that was done.

Maybe I can do it without showing them to him and if he needs them to refresh his recollection, I can show them to him.

BY MR. BRILL:

Q Can you describe the Watson Avenue job, Mr. O'Reilly?

A Yes.

Q All right, will you do that, please?

A It was the installation of a large water main, 40 inch water main, approximately 15,000 feet long, and it took in an extensive area. It required excavation, the installation of the pipe, the welding of the pipe, the coating of the pipe, appurtenances, bypasses, manholes, access manholes, back fill, and restoration of the disturbed pavement.

Q Did that require excavation?

A Yes.

Q Did it require the removal of material excavated?

A Yes.

Q Did it require back fill after the pipe was installed?

A Yes, with pure sand.

Q And that was sand hauled to the job site?

A Yes.

Q Was the material excavated at the job site hauled some place else?

A On that particular job, all material that was excavated was taken off the job. Nothing was allowed to be put back in on top of this coated pipe.

Q Now, do you recall whether that was a job obtained by Paterno & Sons, Incorporated on the basis of competitive bidding?

A Yes, it was a regular City job; it was a competitive bid and whoever was lowest got the job.

Q And was that job completed?

A Yes.

Q And having looked at Exhibit AQ for identification, can you describe the kind of material that was excavated and hauled away from that job?

A It was in many instances a fill area, meaning at one time the street was low, and it was brought up to

legal grade with back fill. Being in the Bronx and in the rock area, a lot of the fill was rocky and pieces of rock and dirt, and it was what we would describe as unsuitable fill.

Q And described by the City as unsuitable fill?

A Yes.

Q Which required that it all be removed?

A That the specifications of the job were that nothing was to be stored on the street, including pipe, whatever pipe you ordered for that day, you had to put in the trench, no material whatsoever was allowed to be stored on the street. Not no material, but no pipe or dirt.

Q Was there a dump site to which the excavated material was taken?

A Yes.

Q Do you recall now where that dump site was?

A It was the-- most of it was to go to the pistol range in City Island.

Q And how far into the pistol range in City Island was it hauled or taken?

A Would you repeat that, please?

Q How far into the pistol range at City Island was the excavated material taken?

A You mean from the beginning of the pistol range to where the dump is?

Q Right, approximately.

A About a mile, a mile and a half.

Q And how far from the job site is it to the pistol range, what is the distance?

A I would think about 12, 13 miles.

Q Were there plans and specifications laid down by the City which governed the job that Paterno & Sons, Incorporated did?

A Yes.

Q Did you, in connection with your work as a superintendent on that job, see and work with those plans and specifications?

A Yes.

Q Watson Avenue is located in the Bronx, is it not?

A Yes.

MR. BRILL: May we have this marked for identification, please.

xx (Defendant's Exhibit AR marked for identification.)

Q Can you tell, Mr. O'Reilly, from looking at Exhibit AR for identification, if these are the plans and specifications for the Watson Avenue sewer to which you have

just referred?

A Yes, these are the plans. Whether they are complete or not-- these are the plans.

Q And did you work from those plans in connection with discharging your functions as superintendent on that job?

A Yes.

Q Now, will you be good enough to tell the Court and jury how the excavated material was removed from the job site to the dump site?

A It was loaded on trucks with the use of construction equipment, back hoe, cranes.

Q And then what was done?

A It was taken to the dump.

Q To the dump site?

A Yes, to the dump site.

Q And was it taken there by these truckers whom you have already described as persons who came looking for jobs with regard to other truckers or called?

MR. SILVERMAN: Objection, your Honor.

THE COURT: Ask him which truckers took it, if he knows.

Do you want to ask him that?

MR. BRILL: I am going to ask him three questions,

Judge.

THE COURT: Then why don't you go right to it?

Do you know who took it away, which truckers?

Q Can you now tell us which particular trucker took what particular load of excavated material?

THE COURT: Mr. Brill, the answer to that is no.

Now ask him a meaningful question, will you?

MR. BRILL: I tried to, Judge.

THE COURT: I know, but you have failed.

Now ask him a meaningful question.

Q Did you engage on the job truckers to remove the excavated material?

A Yes, I did.

Q Were some of those truckers, truckers who were brought to you by other truckers on the job?

A Yes, they were.

Q Do you have a recollection of the names of each one of the truckers who hauled material from Watson Avenue, that Watson Avenue job?

A No, I don't, sir.

Q Was all of the material that was excavated that you have described hauled away by truckers?

A Yes.

Q And was the fill that you have described brought

to the job site by truckers?

A Yes.

Q And where did the fill come from, do you know?

A From somewhere out in Long Island.

Q And was it brought to the job by truckers whom you engaged to do that?

A It was brought to the job by truckers who we bought the fill from.

Q I see. All right.

THE COURT: I didn't understand it.

Did your company engage the truckers who brought the fill?

THE WITNESS: We bought the fill--

THE COURT: Did you hear the question?

THE WITNESS: Yes, I did.

THE COURT: Did you hire the truckers who brought the fill?

THE WITNESS: No, we bought the fill, including the trucking. In other words, we brought a truck to the site.

THE COURT: From whom did you buy the fill, from truckers?

THE WITNESS: From a fill outfit in Long Island.

THE COURT: So you didn't hire the truckers?

THE COURT: That's all I asked you.

THE WITNESS: I'm sorry.

MR. BRILL: I thought he said that before, Judge.

THE COURT: Sorry.

Go ahead.

Q Now, on direct examination this morning, your attention was directed to page 18 of the transcript of the interview conducted by Mr. Ayres and Mr. Rizzo of you on August 31st, 1971.

MR. BRILL: That's Exhibit 3537, your Honor.

Q And you were shown that document --

MR. BRILL: May I remove the mark that was made on this, Judge? That's what erasers were made for.

Q Now, would you look at that, please, and I invite your attention to the last question and answer at the bottom of page 18.

MR. SILVERMAN: Objection, your Honor.

THE COURT: On what grounds?

MR. SILVERMAN: Mr. Brill keeps on using the grand jury testimony in an improper manner.

MR. BRILL: That's not the grand jury testimony.

MR. SILVERMAN: Or question and answer testimony.

THE COURT: But he hasn't asked him a question yet.

MR. SILVERMAN: I will wait until he asks a question.

THE COURT: I think you should.

What is your question?

Q Do you remember being asked this morning to look at that page, page 18, by Mr. Silverman?

A Yes.

Q And you were asked if you were familiar with the name of Tri-County?

A Yes.

Q Is that part of the answer which you made at Question 158?

MR. SILVERMAN: Objection, your Honor.

THE COURT: Sustained.

MR. BRILL: Respectfully except.

THE WITNESS: I'm sorry, you have to ask it --

THE COURT: No, you don't have to answer it.

Q No, the judge has excluded that question.

Did you have truckers who worked for Paterno & Sons, Incorporated, whom you engaged, who grouped together?

A There was a group of-- I have to explain this. There was something come out with the union that you were not allowed to own and operate; in other words, you couldn't own a truck and also drive it. So to get around this,

there was a group of truckers who formed some kind of an organization so that they, as individuals like, didn't own the truck. I don't know if I am making myself clear.

Q Go ahead.

A They didn't own the truck so therefore they sort of beat the union, they were able to drive their own truck.

Q And was that the group that was known as Tri-County?

A I am not sure, but it seems to me that there was a group called Tri-County that were a bunch of individual truckers who got together and formed it.

Q Is that the name that is contained at the bottom of page 18 about which you were asked questions this morning?

MR. SILVERMAN: Objection, your Honor.

THE COURT: Sustained.

You are not allowed to ask him what is contained on a piece of paper that is not in evidence, no part of which has been placed in evidence, or read aloud to the jury.

Now, don't try to do it any other way.

MR. BRILL: Your Honor, he was specifically requested--

THE COURT: To look at the page to refresh his

recollection.

MR. BRILL: And they talked about Tri-County.

THE COURT: He was not asked to read it aloud to the jury.

MR. BRILL: I am asking him if that was the group to which he referred as Tri-County. That's referred to at that page.

THE COURT: All right. Objection sustained.

Now go on to something else.

MR. BRILL: Respectfully except.

pm

Q Do you know whether there was a group of truckers who got together and made available the trucks, the dump trucks of that group to Paterno & Sons, Inc.?

A I don't know if that particular group was made available to Paterno & Sons, Inc. I know that there was -- that this group existed. What particular truckers were in it I couldn't say, but there was a group of truckers.

Q Did you know them by some name other than the names of the specific members of that group?

A No, it just seemed to me that Tri-County -- I could be 100 per cent wrong but it just seemed to me that Tri-County was the name of this group. That is why --

Q All right. Were you asked about that by Mr. Ayres and Mr. Rizzo in August of 1971?

A I was asked something about Tri-County.

Q And did you tell them what in substance you just told us?

A To the best of my memory, yes, I think that is what I said.

Q And that is as a result of looking at the page I just showed you and as was shown to you this morning?

A Ask it again, please.

(Question read.)

A Yes.

MR. BRILL: May I offer that exhibit of the plans of Watson Avenue, your Honor?

MR. SILVERMAN: Objection, your Honor. It is totally irrelevant.

THE COURT: Why is that relevant?

MR. BRILL: Why is it? Because it shows -- and we will offer further proof later to show what was the amount of material excavated, or shows what was required to be excavated by reason of the measurements -- that perhaps is more precise -- and we will show later what it took to excavate that amount of material. That is why I think it is relevant.

THE COURT: Is there any dispute about the amount of material that had to be excavated?

MR. SILVERMAN: I would say --

THE COURT: I am not going to ask the jury to look at those plans for that purpose. If you later can show that it is somehow material in this case to show how much stuff was hauled away from this or any other job, I will let you put them in. They have been sufficiently authenticated. At this moment they seem irrelevant to me, and I do not think I am going to allow that kind of proof -- allow the jury to make that kind of hypothetical

computation in this case. We'll see.

MR. BRILL: All right, your Honor has ruled and I am bound by the ruling.

Excuse me, sir.

(Mr. Brill confers with Mr. Rosenthal off the record.)

BY MR. BRILL:

Q While we are on the subject of plans, did you see the plans for Johnson Avenue?

A Yes.

MR. BRILL: May we have this marked for identification, please.

(Defendants' Exhibit AS was marked for identification.)

BY MR. BRILL:

Q Do you recall what the Johnson Avenue job was, Mr. O'Reilly?

A Yes.

Q Would you be good enough to tell the Court and jury what the Johnson Avenue job was and what it involved?

A It was a job that we did for New York City. It was the installation of a large storm sewer, approximately 40 feet wide, about 13 feet high -- a storm sewer to collect storm water from other contributing smaller sewers. They

led into the big sewer. It also picked up sanitary sewage, but there was a method in the flow where there wasn't any storm or rain, this was a combination job. If it only had rained, it went into a trough --

Q What is that?

A It is a cut through a thing, about four feet deep and two feet wide -- in other words, it would go into this trough. From the trough it would go into a big, huge chamber.

From there it would go down below this big sewer that we put in, into an interceptor sewer which was below this big sewer which we also installed, and then the sanitary flow would go through that sewer and into the plant -- Newtown Creek. When a storm came the sewer would go into the creek through these high tide gates -- there were six big tide gates. When the tidewater is out here (indicating) the gate remains closed. When the water of the tide is higher than the water in the sewer, when the sewer gets the flow, it will push open the gate and thereby be able to discharge the storm water.

The solid material theoretically is supposed to fall into this trough and go through the sanitary, but in essence it is not true -- it goes outright into the water.

Q Right out through the outlet of the sewer?

A Because, you know, the sewer is almost as big as this room and everything is mixed together so some would go through, naturally. But if the plant was taking too much sewage somewhere else, there were gates inside this regulating chamber which would close and not allow that storm water to go through the interceptor going into the plant.

Q To control the flow?

A It would control the flow.

Q And prevent a backflow?

A Yes, the tide gates would prevent that.

Q How long was this sewer that you just described, approximately?

A The main sewer, the big part of it, was about 700 feet long -- 650, 700 feet long.

Q Are you talking now about the box portion or the lower portion?

A Both.

Q Uh-huh. Would it help you to look at --

A No, I don't have to look at it. The big sewer came around and came right down the street and made a turn. That is where it discharged into the water. The regulator was over here -- that is where the sewer began, where it would be 120 feet from the trough.

Then the rest of the distance the two sewers were

there -- one was built first underneath. Then we came along and built the big one over that.

Q Is that what you would call subway excavation or subway construction?

A No, but it would be the same size.

Q Was it a double box sewer?

A It was a double barrelled 218-inch each barrel, inside measurements, plus a 2-foot wall in the center, plus an 18-inch wall on either side, making a total of about 39 or 40 feet wide.

Q That is approximately?

A Yes.

Q Now did you work from the plans which I show you and which have been marked Exhibit AS for identification (handing)?

A Yes, I did.

Q Did the job on Johnson Avenue require excavation?

A Yes, it did.

Q And did it require the removal of the excavated material?

A It required the removal of most of the excavated material.

Q Do you recall where the dump site was in relation to the job site?

A We used two different dumps that I can remember. One was over in College Point, and that got closed down -- I don't know what the problem was, but something with the neighborhood people -- they closed the dump down.

Q Where was that located?

A Somewhere over in College Point, about 20th Avenue.

Q And how far is that from Johnson Avenue, approximately?

A In mileage?

Q Yes.

A I mean I am mentally trying to think how far away it was. Here again it is 12 to 15 miles, or 10 -- no, 12 to 15 miles.

Q And the other dump site was where?

A The other dump site was over on Flatlands Avenue and Pennslyvania Avenue near Linden Boulevard in Brooklyn.

Q And approximately how far is that from the job site?

A I would say 9 to 12 miles, or 10 to 13 miles -- in that area.

Q And were both of those required to be reached by travelling through city streets?

A Yes.

Q And on which there were traffic lights?

A Yes.

Q Have you traversed, or had you traversed the area from the job site to the dump sites?

A I had gone to both dump sites at the beginning. I went to one at the beginning of the job, and the other in order for me to know how long it should take to get there back and forth.

Q At some later time.

A Yes.

Q All right. Now at the beginning of the job at Johnson Avenue -- I will withdraw that.

By the way, did that job run from building line to building line clear across the road, that is, under the sidewalk?

A It did not run from building line to building line, no. It ran --

Q From curb to curb?

A Well, from curb to curb plus about an extra five feet, I think, on one side.

Q And before you began to actually excavate for the sewer itself were you required to clear off the site so as to make room for requipment and materials to be brought there?

A Well, we weren't required to buy anything that

the city said but in order to do the job we had to -- we bought out a business -- there was a junkie business there. We bought it out or paid the rent and they moved out and we moved in, because there was no access -- you couldn't do the job without it. There wasn't any room left in the street..

Q Was that a place called Sonny's Auto Wreckers?

A Yes.

Q Were photos taken at the time before the job was actually begun, to show what was on the site that had to be cleared away?

A Yes.

MR. BRILL: Will your Honor excuse me one moment. Could I have that marked for identification?

(Defendants' Exhibit AT was marked for identification.)

BY MR. BRILL:

Q I show you Exhibit AT for identification and ask you to tell us if that is a fair representation -- if these pictures constitute a fair representation of the area and the end of the area covered by Sonny's Auto Wreckers which you had to clear before you began the excavation of Johnson Avenue (handing).

A (After examining) Yes, it is.

mkbr 10 O'Reilly-cross

MR. BRILL: May I offer these in evidence, your Honor.

MR. SILVERMAN: The same objection as to the other pictures, your Honor.

THE COURT: Why are they relevant?

MR. BRILL: Because it shows what was needed to be done in connection with the preparation for the job in which the excavation was done, and it also shows that there was a need for the removal of matter that was not contract matter and was required, as I think your Honor will see from the picture, the use of equipment that is more than a human being.

THE COURT: Am I to assume that you are making an offer of proof here that some day you are going to put all these things together and you are going to get some experts --

MR. BRILL: Yes.

THE COURT: -- who are going to say how many truckloads the company used each year and how much it cost?

MR. BRILL: Substantially correct, yes.

THE COURT: And you are going to claim that takes care of this issue as to whether these five truckers, or any of them, were existent or non-existent -- is that

going to be your position?

MR. BRILL: No, sir.

THE COURT: I have to understand.

MR. BRILL: Well, I want to tell you --

THE COURT: Because it sounds irrelevant.

MR. BRILL: Well, I want to tell you what my position is.

THE COURT: Please tell me.

MR. BRILL: All right. Your Honor is limiting me by saying does that takecare of the five truckers --

THE COURT: Because that is the issue in the case, Mr. Brill.

MR. BRILL: Well, I take issue --

THE COURT: The government's claim centers -- and we might as well say it in front of the jury, since we are here now for seven days -- on the question of whether any or all of these truckers were non-existent.

If the government does not prove that beyond a reasonable doubt this case is over. Is that fair enough, Mr. Silverman?

MR. SILVERMAN: Very fair.

MR. BRILL: Why doesn't your Honor ask me that?

THE COURT: All right, that is the case.

MR. BRILL: Because I do not think this material

could have been excavated, whether these five were there or five other men were there or 25 other men were there. They were required to excavate a certain amount of material, and we will show that that material was excavated, and I don't care by what name you call the trucker who carried it away --

THE COURT: Is that your position?

MR. BRILL: That is my position.

THE COURT: All right, then the pictures are excluded.

I just want to understand it, because that approach to this case I will not allow, and I will not allow the jury to sit here and listen to people compute truckloads and say that they met a certain set of specifications in response to a case that has finite issues, and that must end some day.

That is the ruling.

MR. BRILL: I respectfully except, your Honor, to your limitation.

THE COURT: You know you have an exception in the federal court without that ritual.

Let us proceed.

MR. BRILL: Well, that is a matter of habit, but your Honor is depriving me of the opportunity to show

that this excavated material was removed.

THE COURT: No.

MR. BRILL: And I believe that is material.

THE COURT: I think the government will concede it -- I think they should.

Do you have any dispute that the excavated material was removed?

MR. SILVERMAN: Whatever was there was removed and whatever was brought back was brought back.

THE COURT: Let us proceed. The pictures will not be received.

MR. BRILL: All right, and I take it that --

Well, I ask that these be marked as well.

(Defendants' Exhibit AU was marked for identification.)

t3 pm me:mg 1 O'Reilly-cross

Q Mr. O'Reilly, before the excavation for the Johnson Avenue sewer was commenced, was there a need to demolish and excavate and remove the material from an outfall sewer which blocked the construction?

THE COURT: Now, Mr. Silverman, I think at some point we have got to get some consistency into this record. Either all of this fill that you have, et cetera, is relevant or none of it is, and you have got to take a position.

MR. SILVERMAN: My position is that if he could recollect what the company did at that time I have no objection as to what they did, if the Court considers it relevant.

I think this whole area is irrelevant. But if the Court wants him to testify as to his own personal knowledge as to what he saw and what was done, the government is not contending that the fill wasn't removed and the construction was made.

THE COURT: You don't object to this?

MR. SILVERMAN: I object to the whole line of questioning, your Honor.

THE COURT: That is what I am asking you and I think, if you do object, I am going to sustain it, because I think this record needs to be regulated at this point

and we will not go on with this.

If you are going to show, Mr. Brill, any specific trucking activities by identifiable people, I will allow that. If you are going to show something else, other than what you have described to me in your offer of proof a few minutes ago, I will consider that.

But if these accumulations of activities, construction activities, which I deem to be undisputed, are meant to serve no purpose beyond what you described to me, a page or two earlier, trying to reconstruct this transcript, I am not going to allow it.

You may make an offer of proof at the side bar and then go on and not waste time because if I am in error, I think the error is clear enough, but I must regulate this trial by standards of relevance as nearly as I can, and I think this exceeds them.

MR. BRILL: Can I have a moment to talk with counsel?

THE COURT: Take five minutes, ladies and gentlemen.

(Recess.)

THE COURT: All right, Mr. Brill.

MR. BRILL: I suppose the witness should be excused during the making of the offer of proof, your Honor.